

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

C.A. NUMBER: 05-11401-MLW

SENECA INSURANCE COMPANY
As Subrogee of Surfside Condominium
Association,

Plaintiff,

v.

BROAN-NUTONE LLC,

Defendant.

**AFFIDAVIT OF CHRISTOPHER A. DUGGAN IN SUPPORT OF MOTION OF
BROAN-NUTONE LLC FOR SUMMARY JUDGMENT**

I, Christopher A. Duggan, hereby depose and state as follows:

1. This affidavit is made of my personal knowledge except as to those statements based on information and belief.
2. I am an attorney with the law firm of Smith & Duggan LLP, Lincoln North, 55 Old Bedford Road, Lincoln, MA 01773, admitted to practice law before the courts of the Commonwealth and in good standing (BBO No. 544150).
3. I am a counsel of record for Broan-NuTone LLC ("Broan"), a party to this matter.
4. I submit this affidavit in support of (1) Defendant Broan-NuTone LLC's Motion for Summary Judgment and Request for Oral Argument ("Motion"), and (2) Defendant Broan-NuTone LLC's Memorandum and Local Rule 56.1 Statement in

Support of Motion for Summary Judgment and Request for Oral Argument
("Memorandum").

5. Attached at Tab A is a true and accurate copy of the Complaint.

6. Attached at Tab B is a true and accurate copy of the Yarmouth Fire
Department Report dated December 16, 2003.

7. Attached at Tab C is a true and accurate copy of portions of the transcript
of the deposition testimony of Wayne Levasseur taken on February 3, 2006 and relied
upon by Broan in its Motion and/or referred to by Broan in its Memorandum.

8. Attached at Tab D is a true and accurate copy of portions of the transcript
of the deposition testimony of Richard Vigeant taken on March 14, 2006 and relied upon
by Broan in its Motion and/or referred to by Broan in its Memorandum.

9. Attached at Tab E is a true and accurate copy of the December 29, 2003
Report from Engineering and Fire Investigations (EFI) to Seneca Insurance Company.

10. Attached at Tab F is a true and accurate copy of portions of the transcript
of the deposition testimony of Melissa Vieira taken on December 8, 2006 and relied upon
by Broan in its Motion and/or referred to by Broan in its Memorandum.

11. Attached at Tab G is a true and accurate copy of portions of the transcript
of the deposition testimony of Walter Becker taken on September 22, 2006 and relied
upon by Broan in its Motion and/or referred to by Broan in its Memorandum.

12. Attached at Tab H are true and accurate copies of records produced by
Whalen Restoration.

13. Attached at Tab I are true and accurate copies of records produced by
Seneca Insurance Company.

14. Attached at Tab J is a true and accurate copy of the August 12, 2004 report from Industrial Services & Engineering, Inc. (ISE) to Wayne Levasseur.

15. Attached at Tab K is a true and accurate copy of the Interrogatories of Broan-NuTone LLC to Plaintiff Seneca Insurance Company that were served on December 16, 2005. As of the date of this Affidavit, Seneca has not served answers to these interrogatories.

16. Attached at Tab L are true and accurate copies of the Fed. R. Civ. P. 30(b)(6) notices that were served on Seneca. As of the date of this Affidavit, Seneca has not produced a witness in response to these notices.

17. Attached at Tab M is a true and accurate copy of a December 16, 2003 *Cape Cod Times* article.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY ON THIS 6th
DAY OF FEBRUARY 2007.

/s/ Christopher A. Duggan
Christopher A. Duggan

CERTIFICATE OF SERVICE

The undersigned certifies service of the foregoing on February 6, 2007 in accordance with Federal Rule of Civil Procedure 5(b)(2) and United States District Court for the District of Massachusetts Electronic Case Filing Administrative Procedure § E(2) as to all parties, having appeared in this action through counsel admitted to practice before this Court, identified by the Clerk as receiving Notice of Electronic Filing.

Counsel for Defendant BROAN-NUTONE LLC,

/s/ Christopher A. Duggan
Christopher A. Duggan
BBO No. 544150
SMITH & DUGGAN LLP
Lincoln North
55 Old Bedford Road
Lincoln, MA 01773-1125
(617) 228-4400

Dated: February 6, 2007

A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MAR 16 2005

SENECA INSURANCE COMPANY as
subrogee of SURFSIDE CONDOMINIUM
ASSOCIATION,

X Date Filed:

**NOT COMPARED
WITH COPY FILED**

Index No.

103660/05

Plaintiff,

COMPLAINT

-against-

BROAN-NUTONE, LLC

Defendant.

X

Plaintiff, by its attorneys, Tese & Milner, as and for its Complaint herein,
respectfully sets forth and alleges as follows:

FACTS COMMON TO ALL CAUSES OF ACTION

1. That at all times hereinafter mentioned, the plaintiff SENECA INSURANCE COMPANY as subrogee of SURFSIDE CONDOMINIUM ASSOCIATION INC. ("Seneca" or "plaintiff"), was and is an insurance company duly organized under the laws of the State of New York, engaged in the transaction of business in the State of New York, with its principal place of business in New York, New York.
2. That at all times hereinafter mentioned the subrogor SURFSIDE CONDOMINIUM ASSOCIATION ("Surfside" or "subrogor") was and is a Massachusetts Corporation engaged in the business of real property ownership/management, with its principal place of business at 585 Main Street, West Yarmouth, Massachusetts.
3. That at all times hereinafter mentioned the defendant BROAN-NUTONE, LLC ("Broan" or "defendant") was and is a Delaware Limited Liability Company, registered

in the state of Wisconsin, with its principal place of business at 926 West State Street, Hartford, Wisconsin 53027.

4. That at all times hereinafter mentioned, Defendant Broan was and is engaged in the business of manufacturing, selling, distributing and delivering electrical equipment, fans, exhaust fans and other electrical products, and more particularly a certain exhaust fan assembly known as a Broan-Nutone Exhaust Fan, model no. 657, built in 1997.
5. That at all times hereinafter mentioned, Defendant Broan's products entered the stream of commerce in, among other places, the state of New York.
6. Upon information and belief, prior to July 15, 2003, Defendant Broan, directly or through a distributor or agent, sold or delivered to Surfside, for good and valuable consideration, the Broan-Nutone Exhaust Fan, model no. 657.
7. Upon information and belief, prior to July 15, 2003, Defendant Broan, its agents, servants and/or employees, designed and manufactured the Broan-Nutone Exhaust Fan bearing model no. 657 and filed and secured patents thereon.
8. Prior to July 15, 2003, Defendant Broan sold and delivered its Broan-Nutone Exhaust Fan bearing model no. 657 to a retail outlet, to be used by the general public and more particularly, subrogor Surfside.
9. Prior to July 15, 2003, the subrogor Surfside had installed, at its premises, the Broan-Nutone Exhaust Fan bearing model no. 657, for the use, need, purpose, and service of Surfside, its agents, servants, invitees and employees.
10. On or about July 15, 2003, a fire occurred at the premises occupied by subrogor Surfside, which fire caused damage and harm to the subrogor's premises, property, equipment, inventory, goods and business.

11. At the time of the fire, the Broan-Nutone Exhaust Fan at the subrogor's premises was being used for the purpose and in the manner normally intended.
12. The Broan-Nutone Exhaust Fan was intended to and did reach subrogor Surfside without material modification.
13. At all times mentioned herein, Plaintiff Seneca issued an insurance policy to plaintiff's subrogor Surfside insuring the premises against property damage and related expenses.
14. Under the contract of insurance between Seneca and Surfside, Seneca was and is obligated to pay claims submitted for damage to the real and personal property at the premises.
15. As a result of the July 15, 2003 fire, Plaintiff's subrogor Surfside sustained extensive financial damages for the cost of repair, replacement, cleaning services, etc.
16. Subsequent to the July 15, 2003 fire, Plaintiff's subrogor Surfside made an insurance claim to Seneca for the damages caused to the premises at 585 Main Street, West Yarmouth, Massachusetts by the fire.
17. Under the contract of insurance between Seneca and its subrogor Surfside, Seneca paid to Surfside the amount of \$197,244.59 on the insurance claim submitted for damages to the real and personal property of Surfside, as a result of the damages caused by the fire on July 15, 2003.
18. As a result of Seneca's payment to its subrogor, Seneca is subrogated to the extent of its payment, to the rights of its subrogor, as against all individuals, entities and corporations responsible for the loss and the resulting damage.

AS AND FOR A FIRST CAUSE OF ACTION

19. Plaintiff Seneca repeats and realleges each and every allegation contained in paragraphs 1 through 18 of this Complaint.

20. On July 15, 2003, a fire occurred at the premises occupied by subrogor Surfside located at 585 Main Street, West Yarmouth, Massachusetts.

21. The fire was due solely to the negligence of Defendant Broan, its agents, servants and/or employees in manufacturing, designing, selling, installing, dealing in and delivering the improper and defective Broan-Nutone Exhaust Fan, and manufacturing, designing, selling, installing, dealing in and delivering exhaust fans which were inherently dangerous. Defendant Broan was also negligent in failing to take proper precautions and safeguards, and failing to see that the exhaust fans were fit, proper and reasonably safe for the use for which they were intended. Defendant Broan negligently failed to provide exhaust fans of marketable quality, or to make proper tests and negligently failed to warn the general public and more particularly the subrogor herein and others of the dangers inherent in the use of its exhaust fans. Defendant Broan negligently failed to test the exhaust fans in conditions under which they were to be used. Defendant Broan negligently failed to provide proper safeguards for their exhaust fans, or have the exhaust fans equipped with proper fuses and/or internal thermal overload devices. Defendant Broan negligently manufactured, sold, installed, and distributed their exhaust fan in a careless, dangerous and improper manner with latent defects not observable to the user. Defendant Broan was negligent in failing to construct and install the exhaust fan in conformity with accepted standards, practices and procedures, in creating and maintaining a nuisance, trap or hazard, in failing to warn, caution or apprise

users of the exhaust fans and especially subrogor Surfside, of the dangers and hazardous conditions which resulted and which caused subrogor's injuries.

22. As a result of the fire, Surfside sustained damage to its premises, property, goods, equipment and inventory in the amount of \$197,244.59.

23. By reason of the foregoing, Plaintiff demands recovery against the defendant Broan in an amount not less than \$197,244.59.

AS AND FOR A SECOND CAUSE OF ACTION

24. Plaintiff Seneca repeats and realleges each and every allegation contained in paragraphs 1 through 23 of this Complaint.

25. At all times stated herein, defendant Broan, its agents, servants and/or employees expressly and impliedly warranted to the general public and to the plaintiff's subrogor that the Broan-Nutone Exhaust Fan bearing model no. 657 was safe for the use intended.

26. The plaintiff's subrogor relied upon the warranties both expressed and implied and used the exhaust fan.

27. Upon information and belief, defendant, its agents, servants and/or employees breached the warranties. The Exhaust Fan was not fit for the purposes for which it was intended, was not of marketable quality, was unsafe for use, was of unsafe and defective design and dangerous, and contained latent defects.

28. Plaintiff's subrogor had no knowledge of the falsity of the warranties.

29. On or about July 15, 2003, Surfside used the Broan-Nutone Exhaust Fan bearing model no. 657 at the premises it occupied at 585 Main Street, West Yarmouth, Massachusetts.

30. Surfside relied upon the warranties and representations made by Broan and as a result of using the Broan-Nutone Exhaust Fan bearing model no. 657 suffered property damage.

31. Surfside suffered damage which resulted from a fire on July 15, 2003 which fire was caused by the use of the Broan-Nutone Exhaust Fan bearing model no. 657.

32. By reason of the foregoing breach of warranties and representations, Surfside sustained property damages in the amount of \$197,244.59.

AS AND FOR A THIRD CAUSE OF ACTION

33. Plaintiff Seneca repeats and realleges each and every allegation contained in paragraphs 1 through 32 of this Complaint.

34. Prior to July 15, 2003, the Broan-Nutone Exhaust Fan bearing model no. 657, manufactured by defendant Broan, was defectively designed and defective with respect to its mechanisms and appurtenances when it was shipped from the factory operated by Broan.

35. This cause of action is instituted against the defendant under the doctrine of strict liability in tort.

36. On or about July 15, 2003, Surfside was lawfully and properly using the Broan-Nutone Exhaust Fan bearing model no. 657 for the purpose and in the manner for which it was normally intended to be used.

37. Use of the Broan-Nutone Exhaust Fan bearing model no. 657 caused the fire which resulted in damage to Surfside's property as alleged herein.

38. Surfside did not discover the defect with respect to the design and manufacture of the Broan-Nutone Exhaust Fan bearing model no. 657, nor did Surfside perceive its danger.

39. Surfside exercised reasonable care in the utilization of the exhaust fan and used it for the purpose for which it was intended.

40. The defective design and the dangerous construction of the Broan-Nutone Exhaust Fan bearing model no. 657 was a substantial factor in causing the fire and the consequent damages to Surfside and its property.

41. As a result of the fire, Surfside sustained damages in the amount of \$197,244.59.

WHEREFORE, Plaintiff Seneca demands judgment against defendant Broan on all causes of action for an amount not less than \$197,244.59 and for such other and further relief as this Court deems just and proper.

Dated: New York, New York
March 16, 2005

Yours etc.


MICHAEL M. MIENER

Tese & Milner
Attorneys for Plaintiff
One Minetta Lane
New York, New York 10012
(212) 475-3673

B

MM DD YYYY		Case #		Document		Filed		Page		NFIRS -1	
01351		05-cv-11401-MBB		35-3		02/06/2007		2 of 11		Basic	
FDID *		State *		Incident Date		Station		Incident Number *		Exposure *	
B Location* <input type="checkbox"/> Check this box to indicate that the address for this incident is provided on the Wildland Fire Module in Section B "Alternative Location Specification". Use only for Wildland fires. <input checked="" type="checkbox"/> Street address <input type="checkbox"/> Intersection <input type="checkbox"/> In front of <input type="checkbox"/> Rear of <input type="checkbox"/> Adjacent to <input type="checkbox"/> Directions Number/Milepost: 589 Prefix: ROUTE 28 Street or Highway: West Yarmouth City: MA State: 02673 Zip Code: Census Tract: - Cross street or directions, as applicable:											
C Incident Type * 111 Building fire Incident Type				E1 Date & Times Check boxes if dates are the same as Alarm Date. Alarm * 12 15 2003 14:07:00 Arrival * 12 15 2003 14:11:00 Controlled Last Unit Cleared 12 15 2003 16:34:00 Midnight is 0000 Month Day Year Hr Min Sec ALARM always required ARRIVAL required, unless canceled or did not arrive CONTROLLED Optional, Except for wildland fires LAST UNIT CLEARED, required except for wildland fires				E2 Shift & Alarms Local Option Shift or Alarms District Platoon E3 Special Studies Local Option Special Study ID# Special Study Value			
D Aid Given or Received* 1 <input checked="" type="checkbox"/> Mutual aid received 2 <input type="checkbox"/> Automatic aid recv. 3 <input type="checkbox"/> Mutual aid given 4 <input type="checkbox"/> Automatic aid given 5 <input type="checkbox"/> Other aid given N <input type="checkbox"/> None Their FDID: 01922 Their State: Their Incident Number:				F Actions Taken * 11 Extinguish Primary Action Taken (1) 12 Salvage overhaul Additional Action Taken (2) Additional Action Taken (3)				G1 Resources * <input checked="" type="checkbox"/> Check this box and skip this section if an Apparatus or Personnel form is used. Apparatus: 0007 Personnel: 0039 Suppression EMS Other <input type="checkbox"/> Check box if resource counts include aid received resources.			
Completed Modules <input checked="" type="checkbox"/> Fire-2 <input checked="" type="checkbox"/> Structure-3 <input type="checkbox"/> Civil Fire Cas.-4 <input type="checkbox"/> Fire Serv. Cas.-5 <input type="checkbox"/> EMS-6 <input type="checkbox"/> HazMat-7 <input type="checkbox"/> Wildland Fire-8 <input checked="" type="checkbox"/> Apparatus-9 <input checked="" type="checkbox"/> Personnel-10 <input type="checkbox"/> Arson-11				H1* Casualties Deaths Injuries Fire Service Civilian H2 Detector Required for Confined Fires. 1 <input type="checkbox"/> Detector alerted occupants 2 <input type="checkbox"/> Detector did not alert them U <input type="checkbox"/> Unknown				H3 Hazardous Materials Release N <input type="checkbox"/> None 1 <input type="checkbox"/> Natural Gas: slow leak, no evaluation or HazMat actions 2 <input type="checkbox"/> Propane gas: <21 lb. tank (as in home BBQ grill) 3 <input type="checkbox"/> Gasoline: vehicle fuel tank or portable container 4 <input type="checkbox"/> Kerosene: fuel burning equipment or portable storage 5 <input type="checkbox"/> Diesel fuel/fuel oil: vehicle fuel tank or portable 6 <input type="checkbox"/> Household solvents: home/office spill, cleanup only 7 <input type="checkbox"/> Motor oil: from engine or portable container 8 <input type="checkbox"/> Paint: from paint cans totaling < 55 gallons 0 <input type="checkbox"/> Other: Special HazMat actions required or spill > 55gal., please complete the HazMat form			
J Property Use* Structures 131 <input type="checkbox"/> Church, place of worship 161 <input type="checkbox"/> Restaurant or cafeteria 162 <input type="checkbox"/> Bar/Tavern or nightclub 213 <input type="checkbox"/> Elementary school or kindergarten 215 <input type="checkbox"/> High school or junior high 241 <input type="checkbox"/> College, adult education 311 <input type="checkbox"/> Care facility for the aged 331 <input type="checkbox"/> Hospital Outside 124 <input type="checkbox"/> Playground or park 655 <input type="checkbox"/> Crops or orchard 669 <input type="checkbox"/> Forest (timberland) 807 <input type="checkbox"/> Outdoor storage area 919 <input type="checkbox"/> Dump or sanitary landfill 931 <input type="checkbox"/> Open land or field				I Mixed Use Property NN <input type="checkbox"/> Not Mixed 10 <input type="checkbox"/> Assembly use 20 <input type="checkbox"/> Education use 33 <input type="checkbox"/> Medical use 40 <input type="checkbox"/> Residential use 51 <input type="checkbox"/> Row of stores 53 <input type="checkbox"/> Enclosed mall 58 <input type="checkbox"/> Bus. & Residential 59 <input type="checkbox"/> Office use 60 <input type="checkbox"/> Industrial use 63 <input type="checkbox"/> Military use 65 <input type="checkbox"/> Farm use 00 <input type="checkbox"/> Other mixed use 341 <input type="checkbox"/> Clinic, clinic type infirmary 342 <input type="checkbox"/> Doctor/dentist office 361 <input type="checkbox"/> Prison or jail, not juvenile 419 <input type="checkbox"/> 1-or 2-family dwelling 429 <input type="checkbox"/> Multi-family dwelling 439 <input type="checkbox"/> Rooming/boarder house 449 <input type="checkbox"/> Commercial hotel or motel 459 <input type="checkbox"/> Residential, board and care 464 <input type="checkbox"/> Dormitory/barracks 519 <input type="checkbox"/> Food and beverage sales 539 <input type="checkbox"/> Household goods, sales, repairs 579 <input type="checkbox"/> Motor vehicle/boat sales/repair 571 <input type="checkbox"/> Gas or service station 599 <input type="checkbox"/> Business office 615 <input type="checkbox"/> Electric generating plant 629 <input type="checkbox"/> Laboratory/science lab 700 <input type="checkbox"/> Manufacturing plant 819 <input type="checkbox"/> Livestock/poultry storage (barn) 882 <input type="checkbox"/> Non-residential parking garage 891 <input type="checkbox"/> Warehouse 936 <input type="checkbox"/> Vacant lot 938 <input type="checkbox"/> Graded/care for plot of land 946 <input type="checkbox"/> Lake, river, stream 951 <input type="checkbox"/> Railroad right of way 960 <input type="checkbox"/> Other street 961 <input type="checkbox"/> Highway/divided highway 962 <input type="checkbox"/> Residential street/driveway							
Lookup and enter a Property Use code only if you have NOT checked a Property Use box: Property Use 580 General retail, Other NFIRS-1 Revision 03/11/99											

K1 Person/Entity Involved ☐ Local Option ☐ Same as person involved? Then check this box and skip the rest of this section.

Mr., Ms., Mrs. First Name RICHARD MI VI Last Name GEANT Suffix

Number 1022 Prefix MAIN Street or Highway ST Suffix

Post Office Box Apt./Suite/Room City West Barnstable

State MA Zip Code 02668

☐ More people involved? Check this box and attach Supplemental Forms (NFIRS-1S) as necessary

K2 Owner ☐ Same as person involved? Then check this box and skip the rest of this section.

Local Option ☐ Business name (if Applicable) BLYTH INDUSTRIES Area Code 203 Phone Number 661-0196

Mr., Ms., Mrs. First Name WALTER MI BE Last Name CKER Suffix

Number 1 Prefix E Street or Highway WEAVER Suffix

Post Office Box Apt./Suite/Room City GREENWICH

State CT Zip Code

L Remarks ☐ Local Option

CALLED BY BUILDING OCCUPANT REPORTING FIRE IN BATHROOM AT COLONIAL CANDLE (RECIEVED TELEPHONE NOTIFICATION APPROX. 1MINUTE LATER OF AFA FROM CENTRAL STATION) UPON ARRIVAL NOTED MODERATE SMOKE FROM SIDE 3 (C) VENTALATION FAN AND THROUGH ROOF STACKS. ADVANCED DRY 1 3/4 HANDLINE TO 2ND FLOOR OFFICE AREA. DISCHARGED 5LB DRY EXTINGUISHER THROUGH BATHROOM VENT FAN THEN OPERATED HANDLINE THROUGH CEILING KNOCKING DOWN MOST OF FIRE. EXTENSIVE OVERHAUL REQUIRED TO OPEN CEILINGS AND CHASE FIRE THROUGH ATTIC SPACE. EXTERIOR ROOF OPEN IN SEVERAL PLACES.

ELECTRICAL AND BUILDING INSPECTORS CALLED TO SCENE. CAUSE DETERMINED TO BE EXCESSIVE HEET FROM BATHROOM VENTALATION FAN (POSSIBLY SEIZED) IN CLOSE PROXIMITY TO STRUCTURAL COMPONENTS.

L Authorization

Officer in charge ID 110 Signature Bowles, Alan T Position or rank CAPP Assignment Month 12 Day 16 Year 2003

Check Box if same as Officer in charge. ☒ Member making report ID 110 Signature Bowles, Alan T Position or rank CAPP Assignment Month 12 Day 16 Year 2003

B Property Details

B1 ☒ Not Residential
Estimated Number of residential living units in building of origin whether or not all units became involved

B2 001 ☐ Buildings not involved
Number of buildings involved

B3 ☒ None
Acres burned (outside fires) ☐ Less than one acre

C On-Site Materials ☐ None or Products

Enter up to three codes. Check one or more boxes for each code entered.

950 Mixed sales
On-site material (1)

On-site material (2)

On-site material (3)

Complete if there were any significant amounts of commercial, industrial, energy or agricultural products or materials on the Property, whether or not they became involved

- 1 ☐ Bulk storage or warehousing
2 ☐ Processing or manufacturing
3 ☒ Packaged goods for sale
4 ☐ Repair or service
- 1 ☐ Bulk storage or warehousing
2 ☐ Processing or manufacturing
3 ☐ Packaged goods for sale
4 ☐ Repair or service
- 1 ☐ Bulk storage or warehousing
2 ☐ Processing or manufacturing
3 ☐ Packaged goods for sale
4 ☐ Repair or service

D Ignition

D1 25 Bathroom, checkroom,
Area of fire origin *

D2 10 Heat from powered
Heat source *

D3 17 Structural member or
Item first ignited * ☐ Check Box if fire spread was confined to object of origin

D4 65 Fiberboard,
Type of material first ignited Required only if item first ignited code is 00 or <70

E1 Cause of Ignition

☐ Check box if this is an exposure report. Skip to section G

- 1 ☐ Intentional
2 ☐ Unintentional
3 ☒ Failure of equipment or heat source
4 ☐ Act of nature
5 ☐ Cause under investigation
U ☐ Cause undetermined after investigation

E2 Factors Contributing To Ignition

30 Electrical ☐ None
Factor Contributing To Ignition (1)

Factor Contributing To Ignition (2)

E3 Human Factors Contributing To Ignition

Check all applicable boxes

- 1 ☐ Asleep ☐ None
2 ☐ Possibly impaired by alcohol or drugs
3 ☐ Unattended person
4 ☐ Possibly mental disabled
5 ☐ Physically Disabled
6 ☐ Multiple persons involved

7 ☐ Age was a factor
Estimated age of person involved

1 ☐ Male 2 ☐ Female

F1 Equipment Involved In Ignition

☐ None If Equipment was not involved, Skip to Section G

Equipment Involved

Brand

Model

Serial #

Year

F2 Equipment Power

Equipment Power Source

F3 Equipment Portability

- 1 ☐ Portable
2 ☐ Stationary

Portable equipment normally can be moved by one person, is designed to be use in multiple locations, and requires no tools to install.

G Fire Suppression Factors

Enter up to three codes. ☐ None

100 Building
Fire suppression factor (1)

Fire suppression factor (2)

Fire suppression factor (3)

H1 Mobile Property Involved

☐ None

- 1 ☐ Not involved in ignition, but burned
2 ☐ Involved in ignition, but did not burn
3 ☐ Involved in ignition and burned

H2 Mobile Property Type & Make

Mobile property type

Mobile property make

Mobile property model

License Plate Number

State

VIN Number

Local Use

☐ Pre-Fire Plan Available

Some of the information presented in this report may be based upon reports from other Agencies

- ☐ Arson report attached
☐ Police report attached
☐ Coroner report attached
☐ Other reports attached

NFIRS-2 Revision 01/19/99

I1 Structure Type * If fire was in enclosed building or a portable/mobile structure complete the rest of this form	I2 Building Status *	I3 Building Height Count the ROOF as part of the highest story	I4 Main Floor Size *	NFIRS-3 Structure Fire
1 <input checked="" type="checkbox"/> Enclosed Building 2 <input type="checkbox"/> Portable/mobile structure 3 <input type="checkbox"/> Open structure 4 <input type="checkbox"/> Air supported structure 5 <input type="checkbox"/> Tent 6 <input type="checkbox"/> Open platform (e.g. piers) 7 <input type="checkbox"/> Underground structure (work areas) 8 <input type="checkbox"/> Connective structure (e.g. fences) 9 <input type="checkbox"/> Other type of structure	1 <input type="checkbox"/> Under construction 2 <input checked="" type="checkbox"/> Occupied & operating 3 <input type="checkbox"/> Idle, not routinely used 4 <input type="checkbox"/> Under major renovation 5 <input type="checkbox"/> Vacant and secured 6 <input type="checkbox"/> Vacant and unsecured 7 <input type="checkbox"/> Being demolished 8 <input type="checkbox"/> Other 9 <input type="checkbox"/> Undetermined	<u>002</u> Total number of stories at or above grade <u> </u> Total number of stories below grade	<u> </u> , <u>004</u> , <u>800</u> Total square feet OR <u> </u> , <u>060</u> BY <u> </u> , <u>080</u> Length in feet Width in feet	

J1 Fire Origin * <u>002</u> <input type="checkbox"/> Below Grade Story of fire origin	J3 Number of Stories Damaged By Flame Count the ROOF as part of the highest story <u> </u> Number of stories w/ minor damage (1 to 24% flame damage) <u>001</u> Number of stories w/ significant damage (25 to 49% flame damage) <u> </u> Number of stories w/ heavy damage (50 to 74% flame damage) <u> </u> Number of stories w/ extreme damage (75 to 100% flame damage)	K Material Contributing Most To Flame Spread <input type="checkbox"/> Check if no flame spread OR same as material first ignited OR unable to determine Skip To Section L K1 <u>10</u> <u>Structural component or</u> Item contributing most to flame spread K2 <u>63</u> <u>Sawn wood, including</u> Type of material contributing most of flame spread Required only if item contributing code is 00 or <70
--	--	---

L1 Presence of Detectors * (In area of the fire) N <input type="checkbox"/> None Present <u> </u> Skip to section M 1 <input checked="" type="checkbox"/> Present U <input type="checkbox"/> Undetermined	L3 Detector Power Supply 1 <input type="checkbox"/> Battery only 2 <input type="checkbox"/> Hardwire only 3 <input type="checkbox"/> Plug in 4 <input type="checkbox"/> Hardwire with battery 5 <input type="checkbox"/> Plug in with battery 6 <input type="checkbox"/> Mechanical 7 <input type="checkbox"/> Multiple detectors & power supplies 8 <input type="checkbox"/> Other <u> </u> 9 <input checked="" type="checkbox"/> Undetermined	L5 Detector Effectiveness Required if detector operated 1 <input type="checkbox"/> Alerted Occupants, occupants responded 2 <input type="checkbox"/> Occupants failed to respond 3 <input type="checkbox"/> There were no occupants 4 <input checked="" type="checkbox"/> Failed to alert occupants 5 <input type="checkbox"/> Undetermined
L2 Detector Type 1 <input type="checkbox"/> Smoke 2 <input checked="" type="checkbox"/> Heat 3 <input type="checkbox"/> Combination smoke - heat 4 <input type="checkbox"/> Sprinkler, water flow detection 5 <input type="checkbox"/> More than 1 type present 6 <input type="checkbox"/> Other <u> </u> 7 <input type="checkbox"/> Undetermined	L4 Detector Operation 1 <input type="checkbox"/> Fire too small to activate 2 <input checked="" type="checkbox"/> Operated (Complete Section L5) 3 <input type="checkbox"/> Failed to Operate (Complete Section L6) 4 <input type="checkbox"/> Undetermined	L6 Detector Failure Reason Required if detector failed to operate 1 <input type="checkbox"/> Power failure, shutdown or disconnect 2 <input type="checkbox"/> Improper installation or placement 3 <input type="checkbox"/> Defective 4 <input type="checkbox"/> Lack of maintenance, includes cleaning 5 <input type="checkbox"/> Battery missing or disconnected 6 <input type="checkbox"/> Battery discharged or dead 7 <input type="checkbox"/> Other <u> </u> 8 <input type="checkbox"/> Undetermined

M1 Presence of Automatic Extinguishment System * N <input checked="" type="checkbox"/> None Present 1 <input type="checkbox"/> Present <u> </u> Complete rest of Section M	M3 Automatic Extinguishment System Operation Required if fire was within designed range 1 <input type="checkbox"/> Operated & effective (Go to M4) 2 <input type="checkbox"/> Operated & not effective (M4) 3 <input type="checkbox"/> Fire too small to activate 4 <input type="checkbox"/> Failed to operate (Go to M5) 5 <input type="checkbox"/> Other 6 <input type="checkbox"/> Undetermined	M5 Automatic Extinguishment System Failure Reason Required if system failed 1 <input type="checkbox"/> System shut off 2 <input type="checkbox"/> Not enough agent discharged 3 <input type="checkbox"/> Agent discharged but did not reach fire 4 <input type="checkbox"/> Wrong type of system 5 <input type="checkbox"/> Fire not in area protected 6 <input type="checkbox"/> System components damaged 7 <input type="checkbox"/> Lack of maintenance 8 <input type="checkbox"/> Manual Intervention 9 <input type="checkbox"/> Other <u> </u> 10 <input type="checkbox"/> Undetermined
M2 Type of Automatic Extinguishment System * Required if fire was within designed range of AES 1 <input type="checkbox"/> Wet pipe sprinkler 2 <input type="checkbox"/> Dry pipe sprinkler 3 <input type="checkbox"/> Other sprinkler system 4 <input type="checkbox"/> Dry chemical system 5 <input type="checkbox"/> Foam system 6 <input type="checkbox"/> Halogen type system 7 <input type="checkbox"/> Carbon dioxide (CO ₂) system 8 <input type="checkbox"/> Other special hazard system 9 <input type="checkbox"/> Undetermined	M4 Number of Sprinkler Heads Operating Required if system operated <u> </u> Number of sprinkler heads operating	NFIRS-3 Revision 01/19/99

A

FDID 01351 ★	State MA ★	Incident Date MM DD YYYY 12 15 2003 ★	Station 3	Incident Number 03-0005134 ★	Exposure 000 ★
--------------------	------------------	--	--------------	------------------------------------	----------------------

<input type="checkbox"/> Delete
<input type="checkbox"/> Change

NFIRS - 10
Personnel

A

01351

MA

12

15

2003

3

03-000513

000

Delete

NFIRS - 10

FDID *

State *

Incident Date *

Station

Incident Number *

Exposure *

Change

Personnel

B

Apparatus or *
Resource

Use codes listed below

Date and Times

Check if same as alarm date

Month Day Year Hours/mins

Sent

☒Number
of *
People

Use

Check ONE box for each
apparatus to indicate
its main use at the
incident.

Actions Taken

List up to 4 actions
for each apparatus
and each personnel.

1

ID 41

Type 12

Dispatch ☒ 12 15 2003 14:07Arrival ☒ 12 15 2003 14:13Clear ☒ 12 15 2003 16:28

Sent

☒

2

☒ Suppression☐ EMS☐ Other
Personnel
ID

Name

Rank or
GradeAttend
☒Action
TakenAction
TakenAction
TakenAction
Taken137
142Sawyer, Jonathan
Bearse, MatthewFFE
FFPX
X

2

ID 42

Type 11

Dispatch ☒ 12 15 2003 14:07Arrival ☒ 12 15 2003 14:15Clear ☒ 12 15 2003 16:58

Sent

☒

4

☒ Suppression☐ EMS☐ Other
Personnel
ID

Name

Rank or
GradeAttend
☒Action
TakenAction
TakenAction
TakenAction
Taken104
138
157
159Kittila, Robert
Omerzu, Marc
Almonte, Gregg
Cronin, RobertLT
FFE
FFE
FFPX
X
X
X

3

ID 43

Type 11

Dispatch ☒ 12 15 2003 14:07Arrival ☒ 12 15 2003 14:11Clear ☒ 12 15 2003 16:53

Sent

☒

4

☒ Suppression☐ EMS☐ Other
Personnel
ID

Name

Rank or
GradeAttend
☒Action
TakenAction
TakenAction
TakenAction
Taken103
110
130
136Schauwecker, Daniel
Bowles, Alan
Foley, Mark
Mullen, JosephFF
CAPP
SP
FFPX
X
X
X

A

Case 1:05-cv-11401-MBB Document 35-3

Filed 02/06/2007 Page 10 of 11

NFIRS - 10
Personnel

FDID 01351

State MA

Incident Date 12/15

Year 2003

Station 3

Incident Number 03-000513

Exposure 000

Delete

Change

B Apparatus or Resource

Use codes listed below

Date and Times

Check if same as alarm date

Month Day Year Hours/mins

Sent

☒

Number of People

Use

Check ONE box for each apparatus to indicate its main use at the incident.

Actions Taken

List up to 4 actions for each apparatus and each personnel.

1

ID 46

Type 60

Dispatch ☒ 12/15/2003 14:07Arrival ☒ 12/15/2003 14:51Clear ☒ 12/15/2003 16:30

Sent

☒

2

☒ Suppression☐ EMS☐ Other

Personnel ID

Name

Rank or Grade

Attend ☒

Action Taken

Action Taken

Action Taken

Action Taken

113
145Falletti, Steven
Napolitan, RonaldFFP
FFEX
X

2

ID 47

Type 11

Dispatch ☒ 12/15/2003 14:07Arrival ☒ 12/15/2003 14:16Clear ☒ 12/15/2003 16:25

Sent

☒

4

☒ Suppression☐ EMS☐ Other

Personnel ID

Name

Rank or Grade

Attend ☒

Action Taken

Action Taken

Action Taken

Action Taken

118
123
139
144Holmquist, Paul
Christensen, Robb
Huck, Kevin
Enright, KevinFFP
FFE
FFP
FFEX
X
X
X

3

ID 48

Type 11

Dispatch ☒ 12/15/2003 14:07Arrival ☒ 12/15/2003 14:24Clear ☒ 12/15/2003 16:26

Sent

☒

2

☒ Suppression☐ EMS☐ Other

Personnel ID

Name

Rank or Grade

Attend ☒

Action Taken

Action Taken

Action Taken

Action Taken

146
94Foss, Jeffrey
Bent, AllenFFE
CAPX
X

B Apparatus or * Resource
 Use codes listed below

Date and Times
 Check if same as alarm date
 Month Day Year Hours/mins

Sent
☒

Number of * People
 1

Use
 Check ONE box for each apparatus to indicate its main use at the incident.
☒ Suppression
☐ EMS
☐ Other

Actions Taken
 List up to 4 actions for each apparatus and each personnel.

1
 ID 52
 Type 92

Dispatch ☒ 12 15 2003 14:07
 Arrival ☒ 12 15 2003 14:11
 Clear ☒ 12 15 2003 16:20

Sent
☒

1

☒ Suppression
☐ EMS
☐ Other

Personnel ID	Name	Rank or Grade	Attend <input checked="" type="checkbox"/>	Action Taken	Action Taken	Action Taken	Action Taken
96	Sherman, C. Randall	C1	X				

2
 ID
 Type

Dispatch ☐
 Arrival ☐
 Clear ☐

Sent
☐

1

☐ Suppression
☐ EMS
☐ Other

Personnel ID	Name	Rank or Grade	Attend <input checked="" type="checkbox"/>	Action Taken	Action Taken	Action Taken	Action Taken
			<input type="checkbox"/>				
			<input type="checkbox"/>				
			<input type="checkbox"/>				
			<input type="checkbox"/>				
			<input type="checkbox"/>				
			<input type="checkbox"/>				
			<input type="checkbox"/>				

3
 ID
 Type

Dispatch ☐
 Arrival ☐
 Clear ☐

Sent
☐

1

☐ Suppression
☐ EMS
☐ Other

Personnel ID	Name	Rank or Grade	Attend <input checked="" type="checkbox"/>	Action Taken	Action Taken	Action Taken	Action Taken
			<input type="checkbox"/>				
			<input type="checkbox"/>				
			<input type="checkbox"/>				
			<input type="checkbox"/>				
			<input type="checkbox"/>				
			<input type="checkbox"/>				

C

ORIGINAL

Volume 1, Pages 1 - 93

Exhibits: 1 - 4

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SENECA INSURANCE COMPANY

as Subrogee of Surfside

Condominium Association,

Plaintiff

vs.

Docket No. 05-11401-MLW

BROAN-NUTONE LLC,

Defendant

RECORD DEPOSITION OF LUCIER CLAIM SERVICE

by its Designee, WAYNE LEVASSEUR,

and DEPOSITION OF WAYNE LEVASSEUR, Individually

Friday, February 3, 2006, 3:00 p.m.

Smith & Duggan LLP

55 Old Bedford Road

Lincoln, Massachusetts

----- Janis T. Young, RDR, CRR -----

Farmer Arsenault Brock LLC

50 Congress Street, Boston, Massachusetts 02109

617-728-4404 Fax 617-728-4403

1 A. I believe it was the following day -- yes,
2 yes, I was.

3 Q. Right.

4 A. Yes, I was.

5 Q. The fire started, it was on the 13th?

6 A. I'm sorry; yes, that's correct. You said
7 the fire; I was thinking of my contact. That's
8 correct.

9 Q. Had the fire scene been altered at all in
10 the day and a half or two days between the fire and
11 when you arrived, as far as you know?

12 MR. PAPADOPOULOS: Objection.

13 MR. FIELD: Objection.

14 Go ahead; you can answer the question.

15 A. Not that I was aware of.

16 Q. Before you got there, did you talk to
17 anybody from Seneca Insurance Company?

18 A. I do not recall. I don't think I did, but
19 I don't recall.

20 Q. Did you ever talk to anyone from Seneca
21 Insurance Company about this fire?

22 A. Before the inspection?

23 Q. At any time.

24 A. Yes.

1 Q. Who did you talk to?

2 A. I believe it was Donna Moore, but I'm not
3 sure. It could have been Del -- D'Allessandro I
4 believe it is, I believe it is; but I'm not
5 positive.

6 I usually, on a fire this size, call --
7 and I know I did while I was there -- just to make
8 sure they wanted to get somebody down there to take
9 a look at it because of the size of the fire. Not
10 because there was suspicion; just, the amount of
11 damage, we would recommend they call and have
12 somebody come in, a cause-and-origin expert.

13 Q. Before you went, you did not call somebody
14 from Seneca; is that true?

15 A. I don't think so, no.

16 Q. You made the call after you got to the
17 scene?

18 A. That's correct.

19 Q. And you talked to either Ms. Moore or
20 Mr. D'Allessandro?

21 A. That's correct.

22 Q. And what did you say to either of them, and
23 what did they say to you?

24 A. I really don't recall.

1 Q. So he may or may not have said --

2 A. I did have a phone conversation with him
3 the day prior to. In my phone conversation, I'm
4 sure, and I don't recall word for word, but asked
5 him specifics about the fire.

6 Q. During that phone conversation, in general
7 terms, can you tell me what he told you about the
8 cause of the fire?

9 MR. FIELD: Objection.

10 A. I really don't recall.

11 Q. Did he say anything about what he thought
12 caused the fire?

13 MR. FIELD: Objection.

14 A. I don't recall.

15 Q. Do you remember at some point that the
16 insured told you he thought the fire started in a
17 bathroom fan?

18 MR. FIELD: Objection.

19 A. I don't recall.

20 Q. Anyway, "During our inspection" -- I'm
21 going back to the question I asked you -- "we found
22 a fire had started in the second-floor bathroom
23 ceiling. It appeared that the fire started in or
24 around an exhaust fan/light unit."

1 Did you call Ms. Moore or
2 Mr. D'Allesandro after your initial inspection on
3 the 17th and tell them what you found?

4 A. Yes.

5 Q. Before you wrote this report?

6 A. That's correct.

7 Q. Was it on that same day or the day after?

8 A. I believe it was when I left the loss
9 location.

10 Q. When you left the loss location on December
11 17 of 2003, what did you say to either Ms. Moore or
12 Mr. D'Allesandro, and what did they say to you,
13 about your findings as to where the fire started?

14 MR. FIELD: Objection.

15 A. I don't recall.

16 Q. In any event, you told them your
17 conclusion, anyway, that the fire had started in or
18 around the bathroom ceiling fan?

19 MR. FIELD: Objection.

20 A. Not necessarily that day.

21 Q. Did you say anything on that day about
22 where you thought the fire had started?

23 A. No -- I might have said the second-floor
24 bathroom.

1 I've driven by there, but I haven't been back inside
2 the building.

3 Q. Have you spoken to Mr. Vegent at all?

4 A. No, I have not.

5 Q. Have you spoken to any of the owners or
6 employees of Colonial Candle?

7 A. No, I have not.

8 Q. You mentioned earlier in the deposition
9 that you weren't sure that the building was ever
10 repaired. What led you to that conclusion?

11 A. I've driven by there. I know the roof
12 hasn't been repaired. I've driven by there; it
13 looks just like this as of last week, the roof.

14 Q. Looks like what's shown on the first
15 photograph of the EFI photos dated -- what are they
16 dated?

17 A. This patch is still there. I saw that last
18 week. And if that's still there, that means they
19 didn't do the rafters.

20 Q. That's right; okay.

21 Going back to your report, there's a
22 section on your initial report dated January 2, '04
23 that's headlined Subrogation.

24 A. That's correct.

1 Q. Why is this here?

2 A. That's just a standard caption that we put
3 on our reports.

4 Q. That's done in the ordinary course of your
5 business as an independent adjuster?

6 A. That's on every report we send out.

7 Q. What does it mean? What's it there for?

8 A. Subrogation is to let the carrier know if
9 we feel there's subrogation potential.

10 Q. In other words, someone they can get their
11 money back from?

12 A. I guess I'd have to ask you to rephrase
13 that question.

14 Q. Someone they can present a claim to to try
15 to get their money back from once they pay out the
16 insured on the loss?

17 A. You mean the insurance company?

18 Q. Yes.

19 A. That's correct.

20 Q. That's what subrogation is?

21 A. Yes.

22 Q. So what the companies ask you to do, Seneca
23 and others, is to tell them whether you think
24 there's a claim worth investigating against some

1 other company that may have caused this fire, for
2 example?

3 A. Well, in most cases, in nearly all cases,
4 we don't make that decision as adjusters. I'm there
5 to adjust the damage. We recommend that they call
6 in a cause-and-origin expert to take a look and tell
7 them if there's subrogation potential, and that's
8 what we'd normally put in that paragraph.

9 Q. That's what you in fact did put in there?

10 A. That's correct.

11 Q. That's what you were asked to do?

12 A. What I was asked to do.

13 Q. And that's what Seneca wanted?

14 A. That's correct.

15 Q. Is there some practice, or do you have some
16 practice of letting the insurance company know as
17 soon as possible whether or not there's a potential
18 subrogation claim?

19 A. That's correct.

20 Q. Why?

21 A. Well, in this case, as I mentioned before,
22 the size of the fire -- and I had no intention of
23 meaning somebody was responsible for this fire when
24 I first called them, meaning just because of the

1 size of the fire, the amount of damage, for them, to
2 give them the opportunity to investigate in case
3 there would be subrogation potential.

4 Q. And it's important to have the evidence as
5 preserved as much as possible so that all the
6 evidence can be viewed, right?

7 MR. FIELD: Objection.

8 A. That's -- I mean, I'm not there to look at
9 the cause and origin. That is an accurate
10 statement, I would say.

11 Q. And that's what you do for all of your
12 clients?

13 A. That's correct.

14 Q. Make sure that they are aware, and have the
15 best opportunity possible to evaluate the evidence
16 as soon as possible?

17 A. That's correct.

18 Q. So you wrote in your report of January 2 of
19 2004, two weeks after the fire, that "As you are
20 aware, EFI, Engineer and Fire Investigations, was
21 called and has submitted their initial report,"
22 correct?

23 A. Yes.

24 Q. So as of January 2 of 2004, two weeks after

1 this fire, with the fire scene not significantly
2 altered, Seneca already had a cause-and-origin
3 person on the site, right?

4 A. That's correct.

5 Q. In fact, they had already submitted a
6 report to them?

7 A. That's correct.

8 Q. And that report told them they thought this
9 fire started in or around the bathroom fan?

10 MR. FIELD: Objection.

11 A. That's correct.

12 Q. Did you learn of any reason why Seneca
13 didn't tell Broan-NuTone about this fire until three
14 years later?

15 MR. FIELD: Objection.

16 MR. PAPADOPOULOS: Objection.

17 A. I do not.

18 Q. Now, you go on to say, "It appears this
19 fire started in the second-floor bathroom around the
20 light fixture." The fan/light fixture, right?

21 A. Around where it was, or could have been. I
22 don't know if it was even there.

23 Q. And you say, "It appears the fixture is six
24 to seven years old." What led you to that belief?

1 Q. Called EFI?

2 A. That's correct.

3 Q. Have you worked with EFI, or had you worked
4 with EFI before?

5 A. Just on a couple claims.

6 Q. Are they local?

7 A. I believe they have an office in New
8 Bedford, and they service the Cape.

9 Q. Was that a call that you made, do you know?

10 A. Yes. I believe I called Randy Lucier --
11 his expertise is much more than me -- and I asked
12 him, who would we use in this particular case, and
13 he mentioned EFI.

14 Q. And then did you call EFI?

15 A. That's correct; I believe from my cell
16 phone.

17 Q. Did you make that phone call before your
18 January 2 report?

19 A. Oh, yes. I called him, I believe, right
20 away, the day after the fire or the day of the fire,
21 could have been.

22 Q. Who did you speak to at EFI?

23 A. I believe it was the secretary, whoever
24 answered the phone, told them, gave them the policy

1 switch?

2 MR. FIELD: Objection.

3 A. I don't recall.

4 Q. Did you discuss this meter with Mr. Lowe at
5 all?

6 MR. PAPADOPOULOS: Objection.

7 A. Not that I can recall.

8 Q. The reason I ask is, this is from your
9 file, Mr. Lowe's report?

10 A. That's correct.

11 Q. And over on Page 4 -- did you read the
12 report over?

13 A. Yes, I did.

14 Q. And you notice that on Page 4, Mr. Lowe
15 reports a conversation that he had with Mr. Wayne
16 Johnson.

17 A. That's correct.

18 Q. Do you know Mr. Johnson?

19 A. No, I don't.

20 Q. Mr. Johnson apparently is an employee or
21 manager of Colonial Candle, according to --

22 A. That's what the report says, yes.

23 Q. And Mr. Johnson said that the timer, switch
24 timer, would not work.

1 A. That's right, because they're looking into
2 the cause and origin, and they're going to, I
3 believe, interview the fire chief and whoever was
4 there.

5 Q. Do you know if the cause-and-origin person,
6 Mr. Lowe, did any of that?

7 A. I do not know if he did.

8 Q. Anyway, looking at the fire report that's
9 in your file, under Box K, it says, "Owner, Blythe
10 Industries." Do you know what that means?

11 A. No, I don't know.

12 Q. Because my understanding is, this was owned
13 by Surfside Condominium.

14 A. That's what I was made aware of, yes.

15 Q. You have no idea what Blythe --

16 A. No.

17 Q. Any idea who Walter Becker is?

18 A. No, I don't.

19 Q. Do you know anything about Colonial Candle
20 as a business?

21 MR. FIELD: Objection.

22 A. No, I don't.

23 Q. Had you ever been in the store before the
24 fire?

1 Q. Or for subrogation purposes, anything like
2 that?

3 A. No, it did not.

4 Q. When you went back the first time, were the
5 fans still in the cathedral ceiling room on the
6 floor?

7 A. I don't believe I went up there.

8 Q. How about the second time?

9 MR. PAPADOPOULOS: Are we talking about
10 the first time that he went there, the second time
11 that he went there, or the first time --

12 A. You mean after January 2, correct?

13 Q. Of course.

14 MR. PAPADOPOULOS: Objection.

15 A. And I believe it was three times I went
16 back: twice with Whalen, and then I went back, and
17 it's in the file; it was much later. I'm the one
18 who brought the fans to -- yes, it could have been
19 then; that's correct. After 6-25, that's correct; I
20 brought the fans to Industrial Services Engineering.

21 Q. As reflected, you have a report to Lucier
22 dated 6-25-04, correct?

23 A. That's correct.

24 Q. And on the second page, again under the

1 heading subrogation, you state, quote, "As discussed
2 with your office, we picked up both second-floor
3 bathroom fixtures, removed them from the area of
4 origin," right?

5 A. That's correct.

6 Q. When you talk about the area of origin,
7 you're just talking about the building?

8 A. That's right. They were in the next --
9 they weren't far from the bathrooms. You know, from
10 that wall, maybe 15, 16 feet away.

11 Q. They were still on the floor in the
12 cathedral ceiling room?

13 A. They were still in the same place that I
14 can recall as they were originally.

15 Q. Had they been altered at all?

16 MR. FIELD: Objection.

17 A. I did not inspect them.

18 Q. Could you tell one way or another whether
19 anything had been changed in either one of those
20 products?

21 MR. PAPADOPOULOS: Objection.

22 A. Could I?

23 Q. Yes.

24 A. No, I could not.

1 Q. The reason I ask is now we're almost seven
2 months after the fire, right?

3 A. That's correct.

4 Q. And they've been sitting on the floor, as
5 far as you know, in there for seven months?

6 A. That's correct.

7 Q. Do you know if anyone had looked at them
8 other than Mr. Lowe or Mr. Zarek?

9 A. I do not know.

10 Q. Do you know if anyone had altered them in
11 any way?

12 A. I do not know.

13 Q. Do you know if that switch, by the way, was
14 still there on June 24, 2005?

15 A. I don't know.

16 Q. Do you know if anyone made any effort to
17 preserve any of the wires in either of the
18 bathrooms?

19 A. I do not know.

20 Q. Or to trace any of the wires?

21 A. I do not know.

22 Q. Or to preserve the switch box, the circuit
23 breaker panel?

24 A. I do not know.

D

ORIGINAL

1

Volume 1, Pages 1-81, Exhibits 1-6

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 05-11401-MLW

SENECA INSURANCE COMPANY

as Subrogee of Surfside Condominium Associates
Plaintiff,

v.

BROAN-NUTONE LLC

Defendant

DEPOSITION of RICHARD C. VIGEANT

Tuesday, March 14, 2006, 10:19 AM to 12:12 PM

Smith and Duggan LLP

Lincoln North, Third Floor

55 Old Bedford Road

Lincoln, Massachusetts

-----JONATHAN H. YOUNG, RDR/CRR-----

FARMER ARSENAULT BROCK LLC

50 Congress Street, Suite 415

Boston, Massachusetts 02109

617.728.4404 Fax 617.728.4403

www.fabreporters.com

1 A. Two years ago, initially.

2 Q. That would have been...

3 A. Shortly after the fire, once the insurance
4 company was satisfied.

5 I was contemplating at the time
6 renovating the building, and I hired him at that
7 time. We didn't go ahead with that. And then
8 ultimately, he did it now. So there was a
9 delay there of a year, give or take.

10 Q. When were the structures in the bathroom
11 taken down?

12 A. Perhaps two months ago.

13 Q. What about the wiring in the bathroom?

14 A. That too.

15 Q. That's all gone now too?

16 A. Yes.

17 Q. Did anyone from the insurance company ask
18 you to preserve any of that?

19 MR. PAPADOPOULOS: Objection.

20 A. I assumed that the insurance company
21 probably would want to evaluate that, and for this
22 reason I put aside the unit that ultimately caused
23 the fire.

24 How do we know that? It was severely

1 burnt. The other one was hardly touched; it was
2 just blackened.

3 I put it aside. I brought that to the
4 attention of the appraiser, and it was there for his
5 or some evaluation by the insurance company at their
6 pleasure. It is no longer available.

7 It was left quite a period of time, if I
8 had to guess I would say probably a month or more,
9 so that whoever wanted to examine it could do so.

10 Q. Was the manufacturer of the fan given
11 notice of the fire at that time, so they could come
12 and examine it?

13 MR. PAPADOPOULOS: Objection.

14 A. Not to my knowledge.

15 Q. What about the internal wiring from the
16 switch up to the fan unit? Was that preserved?

17 MR. PAPADOPOULOS: Objection.

18 A. What was the question?

19 Q. There was a wall switch, was there not,
20 that controlled the operation of the fan and the
21 light?

22 A. Yes.

23 Q. And to connect the fan to the wall switch,
24 there was wiring; correct?

1 A. Yes.

2 Q. Was the wiring from the wall switch to the
3 fan preserved?

4 A. I believe so, until the area was completely
5 renovated several months ago, when just about all of
6 the partitions on the second floor were removed, as
7 well as wiring and sheetrock and whatever.

8 It's broom-clean now, and the space is
9 essentially open. No partitions any longer.

10 Q. The wall switch, sir, there was a timer on
11 that wall switch, was there not?

12 A. I don't recall.

13 Q. Do you know if that wall switch, or if
14 there was a timer the timer, if that was
15 preserved?

16 A. No, I don't recall.

17 Q. Did anybody ask you to preserve it?

18 A. No.

19 Q. Now, there was overcurrent protection, I
20 take it, in the building; right?

21 MR. FIELD: Objection.

22 A. Overcurrent protection?

23 Q. Yes.

24 A. You mean circuit breakers?

1 A. The origin of the fire was obviously
2 discussed, because the bathrooms were trashed.
3 It was pretty obvious that it initiated from the
4 ceiling fixture.

5 So this was more than a passing
6 interest, obviously. That's the reason for my
7 setting this aside, or otherwise it might have
8 gotten thrown out along with everything else.

9 Beyond that, I don't know. I don't know
10 if he ultimately took it or not. I know we had it
11 set aside for a long period of time, and I don't
12 know if he took the unit or not.

13 Q. I meant to ask you, sir, do you know if
14 there was insulation on the ceiling above the fan?

15 A. Yes. I know that there was insulation.

16 Q. What kind of insulation was that?

17 A. It's a composite. I can't remember the
18 name of it. You don't see it very often. I don't
19 know what it was. It's a white material that was
20 essentially put on, and the roofing would be put on
21 top of that.

22 There was quite a bit of it in the
23 forward part of the office, forward part of the
24 floor.

1 MR. DUGGAN: I don't have any other
2 questions for you, sir. Thank you very much for
3 your time.

4 THE WITNESS: You're welcome.

5 MR. FIELD: I just have a few; just a
6 few.

7 EXAMINATION

8 BY MR. FIELD:

9 Q. Mr. Vigeant, you testified to Mr. Duggan
10 that you removed the unit from the ceiling and you
11 placed it on the floor?

12 A. No, I didn't say I removed it. I simply
13 said I put the unit aside for the insurance
14 company or whoever wished to examine it.

15 Q. Let me ask you. Did you remove it from the
16 ceiling?

17 A. No.

18 Q. Where did you find it?

19 A. It was in the debris where the bathrooms
20 had been badly burned.

21 Q. On the floor?

22 A. I believe so.

23 Q. And you saw it there?

24 A. I believe so.

1 Q. And you picked it up, I take it?

2 A. Yes, put it in a box and put it aside, and
3 let the powers that be know that we had it; and that
4 was the extent of my involvement with the fan.

5 Q. Now, you testified in response to Mr.
6 Duggan's question about what you observed in the
7 ceiling that you saw composite insulation.

8 A. Yes.

9 Q. How did you observe that? Did you get up
10 with a ladder?

11 A. No. It was visible. You could see that.
12 The units that were finished, certain sections of
13 it, at least the ones in the front of the building,
14 that would be facing Route 28, where most of the
15 damage originated, you could see panels, very much
16 like ceiling panels, but they're insulating panels.

17 Q. It's like a drywall; it's a board?

18 A. It's a board. It's a fire-resistant board.
19 It's got a name. I can't recall what it is.

20 Q. And usually it's tacked onto the...

21 A. It's not on the drywall so much as the
22 rafters. That's where I observed it, in any event.

23 Q. And you observed that there was charring on
24 the board? What did you observe about the charring?

E



Engineering and Fire
Investigations

634 State Road, Suite K
North Dartmouth, MA 02747
800-326-5811
Tel: 508-997-4900
Fax: 508-991-8824
www.efiglobal.com

*All sent
to Co
1/6/07*

FIRE INVESTIGATION

Report One and Final



Insured: Surfside Condo Association
Loss Location: West Yarmouth, Massachusetts
Date of Loss: December 15, 2003
Policy No.: Unknown
Claim No.: 3LLN065
EFI File No.: 94507-01565

Report Date: December 29, 2003

Prepared For: Seneca Insurance Company
160 Water Street
New York, NY 10038

Attention: Ms. Donna Moore

THIS REPORT FURNISHED AS PRIVILEGED AND CONFIDENTIAL TO ADDRESSEE. RELEASE TO ANY OTHER COMPANY, CONCERN,
OR INDIVIDUAL IS SOLELY THE RESPONSIBILITY OF ADDRESSEE

94507-01565 December 29, 2003
Insured: Surfside Condo Association

Page 1

ASSIGNMENT

The assignment was received on December 17, 2003, with instructions to conduct an origin and cause investigation on a fire that occurred at 585 Main Street, West Yarmouth, Massachusetts on December 15, 2003.

ENCLOSURES

1. Property Description Form.
2. Photographs (31).
3. Additional Materials Envelope that contains photographs and negatives.

FIRE SCENE EXAMINATION

The fire scene examination was completed on December 18, 2003. Individuals present during the inspection were public adjuster Greg Boyd, partial building owner and co-owner Dick Regent as well as the employees and owners of Colonial Candle Company.

Conditions affecting the overall fire scene examination were normal salvage and overhaul operations as completed by the Yarmouth Fire Department, as well as a municipal fire scene examination. Both ceiling light fixtures/fans from the second floor men's and ladies' room had been pulled down prior to this inspection. They remained on-site and were available for inspection and therefore did not impede my ability to determine the origin and cause of this fire. Most of the circuit breakers had been placed in the off position or reset by an electrician after the fire installing temporary lighting.

The fire scene examination began with an inspection of the exterior surrounding grounds and building. This revealed that the hole that had been cut in the roof by firefighters had been repaired. No other exterior damage was observed. Security of the building is not at issue in this investigation as Colonial Candle was open for business when this fire occurred.

The interior fire scene examination then commenced beginning at the area of least damage, and progressing to the area of most severe. I noted that neither the heating system nor the electric service entrance and meter socket were involved with the cause of this fire. I also examined the second floor electrical distribution panel, which was also undamaged. The main utility appliances were not involved with the cause of this fire. The components of the individual branch circuits will be addressed later in this report.

The first floor was only residually damaged by soot. There was no evidence of fire origin at this location.

94507-01565

December 29, 2003

Page 2

Insured: Surfside Condo Association

I ascended to the second floor of Colonial Candle. In a conference room at the left front corner there was damage at ceiling level and in the roof construction above. This damage progressed in a diagonal fashion from the lower roofline towards the rear of the building. This indicated that the fire communicated from that direction.

In the second floor office at the rear of the Colonial Candle occupancy, similar burning and charring was observed in the roof construction. This damage was the greatest at and adjacent to the void spaces that surrounded and that were above the men's and ladies' room. The men's and ladies' rooms were located on the extreme center left side of the second floor.

I examined the hallway outside and adjacent to the two bathrooms. Smoke and heat damage was observed throughout. All indications were that the products of combustion communicated from the area of the bathrooms.

I first inspected the second floor men's bathroom. There was minimal damage within the actual bathroom. In the void space above the ceiling, significant heavy char and burning was observed. The burn patterns were directional in nature, indicating that the fire communicated from above the ladies' room. Further, the slope of the roof and roof rafters extended in a downward direction towards the ladies' room. The center rafter channel extending out of the ladies' room was severely burned and charred. The fire traveled up this rafter channel from above the ladies' room.

I closely examined the second floor ladies' bathroom. I noted that the switch for the ceiling fan/light fixture was in the on position. It was a timer style switch that was set at about 27 minutes as of the date of this inspection.

Inside the ladies' room there was minimal damage except from that debris that had collapsed from the ceiling. The fire damage occurred above the ceiling level and was limited to the single roof rafter channel directly above where the ceiling fan/light fixture was located. The charring extended down the rafter channel to the exact position of where this fan was located. The fan itself had been removed by public sector investigators prior to this inspection.

Where the fan/light fixture was mounted to the joist, moderate to deep charring occurred. The inner portion of the rafters were charred in a direction towards the fan/light fixture. The burn patterns were very clear and specific, indicating that this fire had its origin at this fixture.

The electrical wiring that led to the fixture was closely examined. Some of the insulation had burned from the conductors. Closer inspection revealed no evidence of excessive arcing or short-circuiting on the wires that remained in the ceiling at the time of this inspection.

I then proceeded to examine the two ceiling light fixtures/fan motors that were located in the men's room and ladies' room. A circular type of light fixture was located above the men's room

94507-01565

December 29, 2003

Page 3

Insured: Surfside Condo Association

ceiling and a rectangular style was the one that was in the ladies' room. Both fixtures had been pulled down by local fire investigating authorities.

The circular fixture from the men's room was examined. It was severely oxidized, discolored and burned. The incandescent bulb in the fixture still remained intact. The exterior housing was severely burned and discolored. However, the burn patterns indicated that the fire did not have its origin at this fan/light fixture.

The rectangular fixture from the ladies' room ceiling was next examined. Its internal fan motor was severely discolored and oxidized due to intense heat levels. The bulb in the light fixture had been broken during this incident and I was unable to determine its wattage. The exterior housing was severely burned and discolored on one side with much lesser damage on the opposite side.

The less damaged side was most likely positioned in the direction towards the lower end of the direction of the roofline. This was away from the damage. The most severe damage in the rafter channel was at the center and towards the peak of the roofline. This explains that the center portion and peak side of the fixture was most damaged.

The rectangular light fixture/fan motor was in no way dismantled or altered. It is in the possession of the Colonial Candle Corporation as they completed a build out on the second floor in 1997 at which time they partitioned in the two bathrooms and installed appropriate wiring and fixtures. I do not feel that this evidence is the property of the Surfside Condominium Association. Officials from Colonial Candle agreed to preserve both light fixtures and the switch for the ladies' room fan until such time as it can be turned over to the appropriate insurance representative.

INVESTIGATION

I spoke with Dick Regent who identified himself as one of the trustees for the Surfside Condominium Association. They lease the area where the fire originated to the Colonial Candle Corporation. Colonial Candle has been there since 1997.

Mr. Regent stated that when Colonial Candle moved in there was no second floor men's or ladies' rooms. Colonial Candle opted at that time to complete a build out on the second floor in order to install a conference room, two bathrooms and an office area. This build out was done at Colonial Candle's expense. At that time, they installed two new bathrooms and put in appropriate electrical wiring and fixtures in both.

Mr. Regent stated that there have been no electrical problems in the building that he is aware of. There has been no recent maintenance or construction. There have been no leaks in the roof that he is aware of as well.

94507-01565

December 29, 2003

Page 4

Insured: Surfside Condo Association

I spoke with Wayne Johnson who identified himself as one of the managers for Colonial Candle Corporation. He confirmed the information regarding the 1997 build out. This was done completely at the direction and at the expense of Colonial Candle.

Mr. Johnson stated that he did not know the exact age and did not know the manufacturer of the two ceiling fan/light fixtures that were in the second floor bathrooms. They were installed in and around the time that they completed their 1997 build out. He did not know the manufacturer of the ceiling fan/light fixtures in the second floor bathrooms. They were not giving them any trouble whatsoever.

Mr. Johnson stated that the only thing that was slightly a problem is the timer that operated the ladies' room lights/fan. The timer would not work. They would need to turn the switch on and then manually turn it to off. It would not automatically shut off via the timer.

I have spoken to Mabel Mel and Melissa Hayes. Mabel believes she was in the ladies' bathroom on the second floor sometime just prior to lunch. She took lunch at 12:30 p.m. She did use the light and she believes that she shut it off.

Melissa Hayes stated that she was in the ladies' bathroom between 10:30 and 11:00 p.m. She was sure that she shut off the light at that time. She reiterated that the timer would not work and she would have to manually turn it off. She does not know if someone else went into the bathroom after her.

I have spoken to all of the employees who worked for Colonial Candle that day. The last person that I can identify as being in the ladies' room was Melissa Hayes between 12:30 and 1:00 p.m. I have been unable to locate anyone who was in the bathroom after Ms. Hayes.

The Falmouth Fire Department, Fire Prevention Bureau has listed this fire as accidental and related to the ceiling fan/fixture in the ladies' room.

DETERMINATION OF ORIGIN AND CAUSE

The origin of this fire has been determined to be in the second floor ladies' room ceiling. The origin has more specifically been determined to be directly at the ceiling fan/light fixture.

The cause of this fire has been determined to be an electrical malfunction in the ceiling fan/light fixture. The exact malfunction is currently undetermined.

RECOMMENDATIONS AND/OR COMMENTS

Adjuster Wayne Levasseur of Lucier Adjustment has been advised of the status of this investigation. At his direction, no further investigative activities will be needed at this time.

94507-01565

December 29, 2003

Page 5

Insured: Surfside Condo Association

Should further investigation be desired, a qualified electrical engineer can analyze the light fixture from the second floor ladies' room in an effort to ascertain its exact malfunction. This fan/light fixture is currently being held by the management of Colonial Candle Corporation.

JEFFREY K. LOWE

Investigator

508-886-2043

File Closed

JKL/lpm

Enclosures

cc: Richard D. Dietzman
Vice President Northeast

[Handwritten signature]
12-29-03

94507-01565 December 29, 2003
Insured: Surfside Condo Association

Page 6

PHOTO DESCRIPTION

1. Front view of the building.
2. The ceiling above the conference room.
3. The ceiling above the office.
4. The hallway on the second floor.
5. The men's room.
6. The men's room ceiling.
7. The men's room ceiling.
8. The men's room ceiling.
9. The attic and void space above the bathrooms.
10. The rafter channel extending downward towards the area above the ladies' room.
11. The small partition wall separating the men's room void space from the ladies' room void space.
12. The door entering the ladies' room.
13. Switch for the fan/light fixture in the ladies' room.
14. Timer switch for the fan/light fixture in the ladies' room.
15. The ladies' room.
16. The ceiling in the ladies' room.
17. The ceiling in the ladies' room and the center rafter channel.
18. The center rafter channel directly where the fan/light fixture was located.
19. The wiring and joist immediately adjacent to where the fan/fixture was located.
20. The charring on the joist and roof deck directly where the fan was located.
21. The fan/light fixtures from both bathrooms.

94507-01565 December 29, 2003
Insured: Surfside Condo Association

Page 7

22. The fixture from the men's room.
23. Some wood from the men's fixture.
24. The bulb for the men's light fixture.
25. The side view of the men's light fixture/fan.
26. The bottom of the men's room fan/fixture.
27. The fan/fixture from the ladies' room.
28. The bulb for the ladies' room light.
29. The lesser burned side of the fixture from the ladies' room.
30. The lesser burned side of the fixture from the ladies' room.
31. The bottom and more severely burned side of the fixture from the ladies' room.
32. The wiring leading into the fixture from the ladies' room.
33. The wiring leading into the fixture from the ladies' room.

**EFI**Engineering and Fire
Investigations**Property Description**

Insured Surfside Condominium Association EFI No. 94507-01565
 Street 585 Main Street City West Yarmouth State MA
 Occupancy ☐ Dwelling ☒ Business ☐ Unoccupied ☐ Other _____
☒ Owner Occupied ☒ Tenant occupied Approximate age _____ years
 Building construction ☒ Wood ☐ Masonry ☐ Metal ☐ Other _____
 Roofing material ☒ Composition material ☐ Metal ☐ Tile ☐ Wood
☐ Tar and gravel ☐ Other _____
 Number of stories 2 Number of rooms _____ Number of baths _____
 Foundation ☐ Basement ☒ Concrete slab ☐ Pier and beam ☐ Crawl space
 Heating ☒ Natural gas ☐ Propane gas ☐ Electric ☐ Other Fuel Oil
 Air conditioning ☐ Natural gas ☐ Propane gas ☐ Electric ☐ Other _____
 Electrical service connected during fire ☒ Yes ☐ No ☐ Unknown
 Alarm system ☒ Yes ☐ No Type Smoke ☒ Local ☐ Monitored
 Garage ☒ None ☐ Attached ☐ Detached Approximate size _____
 Outbuildings on premises ☐ Yes ☒ No ☐ Damaged ☐ Undamaged
 Outside conditions ☒ Normal ☐ Unkempt ☐ Well groomed ☐ Other _____
 General conditions ☐ Excellent ☒ Average ☐ Poor ☐ Other _____
 Fire protection ☐ Unknown ☐ Volunteer ☒ Paid ☐ Paid & Volunteer
 Department Yarmouth Fire Department Distance to Station _____
 Completed during examination ☒ Diagram ☐ Video ☒ Photographs
☐ Measurements ☒ Interviews
 Date examination began 12/18/03 Date examination completed 12/18/03



F

1

Volume 1 Pages 1-78

Exhibits 1-4

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SENECA INSURANCE COMPANY as Subrogee
of Surfside Condominium Association,
Plaintiff

vs. Docket No. 05-11401-MLW
BROAN-NUTONE LLC,
Defendant

DEPOSITION OF MELISSA VIERA

Friday, December 8, 2006, 11:00 a.m.

Little Medeiros Kinder Bulman & Whitney

72 Pine Street, 5th Floor

Providence, Rhode Island

---- Reporter: Christine Silva-Adermann, RPR ----

www.fabreporters.com

Farmer Arsenault Brock LLC

50 Congress Street, Suite 415

Boston, Massachusetts 02109

617.728.4404 Fax 617.728.4403

1 on the second floor sometime just prior to lunch.
2 She took lunch around 12:30 p.m. She did use the
3 light and she believes she shut it off. Melissa
4 stated that she was in the ladies' room between
5 10:30 and 11:00." He says 10:30 and 11:00 p.m. Did
6 you work the night before until 10:30 and 11:00?

7 A. We're not open nights.

8 Q. Let's assume for a moment that he meant
9 a.m. "She was sure that she shut off the light at
10 that time. She reiterated that the timer would not
11 work and she would have to manually turn it off.
12 She does not know if someone else went into the
13 bathroom after her." Ask you if I read that
14 properly?

15 A. Yes.

16 Q. Does that refresh your memory as to whether
17 or not you used the bathroom on the late morning of
18 December 15, 2003?

19 A. I don't recall. I mean, I might have used
20 the bathroom because of the thing, but I don't
21 recall giving that statement.

22 Q. Okay. Would it be fair to say that if I
23 had asked you these questions about what you did
24 that day back in December of 2003, your memory would

1 be better about those?

2 A. Right after the fire, I probably would have
3 remembered.

4 Q. Okay. Do you remember anything about the
5 ladies' room?

6 MR. PONSETTO: Objection to form. You
7 can go ahead and answer.

8 A. What do you mean?

9 Q. You remember there was a ladies' bathroom?

10 A. Yes.

11 Q. Was there one stall or two?

12 A. One.

13 Q. Was there any fixture overhead?

14 A. There was a ceiling fan. The light and the
15 fan put together.

16 Q. So it had a light in it?

17 A. Yes.

18 Q. What controlled the light or the fan?

19 A. The timer on the outside controlled both.

20 Q. Were there two switches, one for the light
21 or one for the fan, or one switch?

22 A. One switch.

23 Q. Were there any other lights in the
24 bathroom?

1 A. No.

2 Q. Was there a mirror over the sink?

3 A. Yes.

4 Q. Were there a set of lights over that
5 mirror?

6 A. I don't recall.

7 Q. Fair enough. Do you remember how the
8 switch -- you said there was a timer switch; was
9 that right?

10 A. Yes.

11 Q. Do you remember how it worked?

12 A. You would turn it, and it was five, ten
13 minutes. And then when it should turn off and it
14 wouldn't turn off, it would just stick. The light
15 and timer would turn off automatically, but it did
16 not.

17 Q. You are going to have to explain that to
18 me. You say there was a timer and it was some type
19 of knob?

20 A. Yes. This knob, you turn it, and it would
21 say minutes. Then you go into the bathroom, you
22 come out, and it automatically shut off on its own.
23 It wasn't automatically turning off. You had to do
24 it yourself.

1 Q. So how would you turn it -- you illustrated
2 with your hand to turn the fan and the light both
3 on, you would have to turn the switch clockwise?

4 A. To the right, yeah.

5 Q. Did you have to punch it in, push it in to
6 get something to start?

7 A. I do believe you pushed it and turned it.

8 Q. Do you remember?

9 A. I don't know now.

10 Q. Okay. You said it was supposed to be such
11 that you would set it to a particular time in
12 minutes?

13 A. Yes.

14 Q. And then it would, the way it was supposed
15 to work it would automatically count down itself and
16 then shut off the fixture?

17 A. Yes.

18 Q. That apparently was not working properly as
19 of the date of the fire?

20 MR. PONSETTO: Objection to form.

21 A. Yes.

22 Q. Am I correct?

23 A. Yes.

24 Q. You said you would have to turn it off

1 manually?

2 A. Yeah.

3 Q. How would you do that?

4 A. I would just turn it to the left to turn it
5 off.

6 Q. You'd have to rotate it back
7 counterclockwise?

8 A. Yes.

9 Q. To get it to turn off?

10 A. Yes.

11 Q. Did you have to punch it to get it to turn
12 off?

13 A. No.

14 Q. Who installed that switch?

15 A. I do not know.

16 Q. Had you reported the fact that it was not
17 working properly to anybody else?

18 A. Yes.

19 Q. To whom?

20 A. I told Wayne Johnson.

21 Q. When did you tell Mr. Johnson?

22 A. I think it was a day or two because it was
23 only broken for like a day or two. I think we told
24 him when it was not working properly.

1 Q. What did Mr. Johnson say to you?

2 A. He said okay. Then that was it.

3 Q. Did Mr. Johnson say we'll get someone to
4 fix it?

5 A. Not to my knowledge. I can't recall.

6 Q. Do you know if Mr. Johnson did anything to
7 fix it?

8 A. I don't know.

9 Q. Or if he hired anybody to fix it?

10 A. I don't know.

11 Q. In the chain of command at Colonial Candle,
12 in the ordinary course of business to whom would
13 Mr. Johnson report issues like that to get them
14 repaired?

15 A. I don't know.

16 Q. Between the time that you reported, the day
17 or two prior to the fire that you reported that the
18 switch was not working and the time of the fire, did
19 you ever see anybody in there trying to fix it?

20 A. No.

21 MR. DUGGAN: Let me, if I might, I'll
22 mark this as the next exhibit.

23 (Marked, Exhibit 3, Report from EFI.)

24 Q. I'm going to show you, Ms. Viera, a

1 document we marked as Exhibit 3. You see it's
2 entitled EFI, and it has two photographs on it.

3 MR. PONSETTO: Do you agree with that?

4 THE WITNESS: Yes.

5 Q. Do you recognize what's shown in that
6 picture?

7 A. It's a timer switch.

8 Q. Is that the timer switch that was in the
9 ladies' room on the day of the fire?

10 A. I don't recall what it looked like,
11 honestly.

12 Q. I take it you would have recalled that if I
13 asked you three years ago?

14 A. Yeah. I know it was similar to that, but I
15 can't recall exactly.

16 Q. Can you remember what the maximum amount
17 was that you could leave it on before it counted
18 down?

19 A. No, I don't remember that.

20 Q. You said there was a light as well as a
21 fan?

22 A. Mm-mm.

23 Q. Correct, in the ceiling?

24 A. Yes.

G

Volume: 1
Pages: 1 to 183
Exhibits: A to R

UNITED STATES DISTRICT COURT
COMMONWEALTH OF MASSACHUSETTS
C.A. No. 05-11401-MLW

SENECA INSURANCE COMPANY, As)
Subrogee of Surfside Condominium)
Plaintiff)
vs.)
BROAN-NUTONE LLC,)
Defendant)

DEPOSITION of WALTER W. BECKER,
a witness called on behalf of the
Plaintiff, pursuant to the applicable
provisions of the Federal Rules of
Civil Procedure, before Judith R. Sidel,
Professional Court Reporter and Notary
Public, in and for the Commonwealth of
Massachusetts, at the Law Offices of
Field & Schultz, 183 State Street,
Boston, Massachusetts 02109, on Friday,
September 22, 2006, commencing at
12:00 p.m.

APPEARANCES: (Continued on page 2)

* * * *

SIDEL COURT REPORTING SERVICES
Certified Shorthand Reporters
35 Tudor Road
Needham, Massachusetts 02492

patterns in the kitchen that was near the bathroom.

A. I believe --

MR. PAPADOPOULOS: Objection.

A. I believe they shared a common wall between the two of them.

Q. What were the burn patterns that you saw in the kitchen that shared a common wall with the bathroom?

MR. PAPADOPOULOS: Objection.

A. To the best I can remember, it was in the ceiling. Some of the fire had, instead of -- you know, went out towards the kitchen area.

Q. Did you take any photographs while you were there?

A. No.

Q. Did you take any videotapes while you were there?

A. No.

Q. Did you make any effort to preserve photographically, graphically, or in any other way the fire scene while you were there?

A. No.

Q. Did you see if Mr. Boyd made any effort to preserve the fire scene?

A. I didn't see anything, no.

Q. Was Broan-Nutone represented at that inspection that you were on?

A. No.

Q. Where was the ceiling fan at the time when you were there in January of 2004?

A. I believe it was still in the ceiling.

Q. Did you go into the other bathroom? You said there were two bathrooms.

A. I don't recall.

Q. Now, did you notice if there were any wires in the ceiling that were leading to or from the ceiling fan in the bathroom?

A. No, I don't recall seeing any.

Q. It would be fair a statement, I take it, that you didn't trace any of the wires?

A. No, that's correct.

Q. Did you know if anybody did on behalf of Mr. Vigeant?

A. I don't know.

Q. Or Mr. Vigeant's insurance company?

testimony earlier today, sir, you mentioned that around December 2nd you wrote a letter to the owner, Mr. Vigeant, telling him of your corporate determination to terminate the lease, and basically was part of a reorganization of the company, right?

A. Right.

Q. And on December 12th, if I remember correctly, in one of these other exhibits he wrote back to you acknowledging your letter, and saying he still believes the lease is in force and in effect?

A. Yes.

Q. But at that time you had made him aware of the fact that as of January 31, 2004, Candle Corporation of America would be vacating the premises. I think that's what the documents state. You can look at it if you want. Exhibit D, I believe, December 2nd, 2003, from this one here, sir.

A. Yeah, I have my copy.

MR. PONSETTO: What's the

Blyth, Inc.
1 East Weaver Street
Greenwich, CT 06831-5118

Tel (203) 661-1926
Fax (203) 661-1969
www.blythinc.com

VIA OVERNIGHT MAIL

December 2, 2003

BLYTH

Mr. Richard Vigeant
1022 Main Street
West Barnstable, MA 02668

RE: *Candle Corporation of America*
585 Main Street, Yarmouth, MA

Dear Mr. Vigeant:

As a follow-up to our phone conversation, please accept this letter as our formal notice to terminate the lease and vacate the above-referenced premises, effective January 31, 2004.

Our decision to terminate the lease was based solely on a change in business strategy and not on any dissatisfaction with the premises.

I will be calling you by the end of this week to discuss the remaining lease obligation and procedure for vacating the premises.

Sincerely,

Walter W. Becker

Walter W. Becker
Senior Manager

WWB/bn



Vigeant 12-2-03

CCA 00003

H



Fire, Smoke, Soot, Water Damage & Mold Remediation Services
Cleaning • Deodorization • Reconstruction

Specializing in Fire Restoration - All Work Guaranteed

Access, Authorization and Direct Payment Request Form

I (we) authorize **WHALEN RESTORATION SERVICES** to perform work as per estimate
at property located at 585 Main Street, West Yarmouth, MA 02673
to repair damage caused by fire on 12/15/03

As owner(s) of this property, I (we) understand that I (we) must authorize this work. I (we) hereby authorize **WHALEN RESTORATION SERVICES** to perform this work and accept responsibility for payment upon completion.

I (we) authorize and direct my Insurance Company Seneca Claim #3LLN065
Policy No. CMP2001017, to make payments directly to **WHALEN RESTORATION SERVICES**, Insurance Claim Specialists, for doing this work and to that extent I (we) assign the benefits applicable to this loss to **WHALEN RESTORATION SERVICES**.

I (we) acknowledge receipt of a copy hereof:

12-15-03
DATED

OWNER Rubén C. Vignanti
SIGNED

[Signature]
WHALEN RESTORATION REP.

OWNER _____
SIGNED

22 American Way, South Dennis, MA 02660
Phone: (508) 760-1911 • Fax: (508) 760-9995 • 1-800-244-2598 • E-Mail: restore@whalenrestorations.com
Web Page: <http://www.whalenrestorations.com>

OFFICE COPY

EMERGENCY AREA RUG SHEET

JOB

2

JobName(owner): Dick
Address: 589 Rte 28

Tenant:
Contact :

Home Phone:()

cellPhone

Work Phone:()

Loss Type:water

Crew Labor - Emergency Service:

3:30

6:20

Date: 12-15-03	Name: Mike	In: 4:00	AM/PM	Out: 6:20	AM/PM
Date: "	Name: Ron	In: 4	AM/PM	Out: "	AM/PM
Date: "	Name: Jimmy	In: 4	AM/PM	Out: "	AM/PM
Date: "	Name: Joe	In: 4	AM/PM	Out: "	AM/PM

TOTAL # OF AREA RUGS: _____

CLEANED BY/
DATE

Type: _____	Size: _____	Room: _____
Type: _____	Size: _____	Room: _____
Type: _____	Size: _____	Room: _____
Type: _____	Size: _____	Room: _____
Type: _____	Size: _____	Room: _____
Type: _____	Size: _____	Room: _____
Type: _____	Size: _____	Room: _____
Type: _____	Size: _____	Room: _____
Type: _____	Size: _____	Room: _____
Type: _____	Size: _____	Room: _____
Type: _____	Size: _____	Room: _____
Type: _____	Size: _____	Room: _____
Type: _____	Size: _____	Room: _____
Type: _____	Size: _____	Room: _____
Type: _____	Size: _____	Room: _____

Notes & Observations:

Ice + Water Stained 5 Rows
1/2" Plywood 10 SHEETS
8' STRAPPING 2 PLYWOOD

JobName(owner): Collette Corbin
Address:

Tenant:

Home Phone: () Phone ()
Work Phone: () Loss Type:

Crew Labor - Emergency Service:

Date: 12-15-03 Name: John M In: 4:00 AM/PM Out: 7:00 AM/PM
Date: 11 Name: James In: 4:00 AM/PM Out: 7:00 AM/PM
Date: 11 Name: John In: 4:00 AM/PM Out: 7:00 AM/PM
Date: Name: In: AM/PM Out: AM/PM

Equipment Left on Site:

Air Movers: Dehumidifiers: Ozone:
Delivered: Picked Up:

Was Laundry picked up? Yes No # of Bags:

Is Debris to be removed? Yes No

Is Estimator Required: Yes No

Rooms (please note if extracted, removed carpet or if Micro-banned):

Room	Size	Services
<u>8 x 20</u>		
<u>Entry Room</u>	<u>10' x 16'</u>	<u>2 DATA EXTENSION Micro</u>
<u>Front Office</u>	<u>16' 6" x 6' 4"</u>	<u>Remove Hana Duvet, Cont/Min, Tear out Carpet</u>
<u>Break Room</u>	<u>17' 2" x 15' 7"</u>	<u>Cont/Min, Remove Hana Duvet</u>
<u>Hall</u>	<u>5 x 14</u>	<u>4' x 6' 4' x 15' 0"</u>
<u>W.D.</u>	<u>9' x 6' 6"</u>	
<u>W.D.</u>		

Notes & Observations:

I

SENECA

160 WATER STREET • NY, NY 10038

<<<<
PAY
TO THE
ORDER OF

SURFSIDE CONDOMINIUM ASSOCIATION ZION FIRST NATIONAL BANK
P.E., ROCKLAND TRUST ISAAC & WHALEN RESTORA

TION SERVICES, INC
RESTORATION WORK

FOR

NINETEEN THOUSAND SEVEN HUNDRED FIFTY-FIVE DOLLARS AND SIXTY-EIGHT CENTS

INSURED/CLAIMANT

SURFSIDE CONDO
SURFSIDE CONDO

PAY

\$19,755.68

DOLLARS

POLICY NUMBER

CMP2001017

CLMT.

01

DATE C

12/

DATE ISSUED

8/12/04

SENECA INSURANCE COMPANY, INC.
NOT VALID AFTER 90 DAYS
TWO SIGNATURES REQUIRED OVER \$2500

NON-NEGOTIABLE

AUTHORIZED SIGNATURE

CLAIM #

03118065

THE BANK OF NEW YORK
NEW YORK, N.Y. 10286

⑈ 180122 ⑈ ⑈ 021000018⑈ ⑈ 8900153830 ⑈

180122



FP



SUP



PP

AGENT:

XS BROKERS INS. AGENCY INC.
POB 690355
1563 HANCOCK ST
QUINCY

MA 02269

SENECA
INSURANCE COMPANY INC.

MAIL TO:

LUCIER CLAIM SERVICE
P.O. BOX 631
EAST BRIDGEWATER

MA 02333

CLAIM FILE COPY

THE ATTACHED CHECK IS IN PAYMENT OF THE LOSS EXPENSE SH

WINS ENTRY

AUG 12

L. HASKINS

FOR:

MAIL TO:

WINS ENTRY

AUG 12 2004

L. HASKINS

SWORN STATEMENT IN PROOF OF LOSS

(For Use With Replacement Cost Coverages)

\$936,000	CMP2001017
AMOUNT OF POLICY AT TIME OF LOSS	POLICY NUMBER
7/15/2003	
DATE ISSUED	
7/15/2004	
DATE EXPIRES	AGENT
To the Seneca Insurance Company	Arlington, MA
of New York, NY	AGENCY AT

At time of loss, by the above indicated policy of insurance you insured Surfside Condominium against loss by All Perils to the property described under Schedule "A", according to the terms and conditions of the said policy and all forms, endorsements, transfers and assignments attached thereto.

1. Time and Origin: A Fire loss occurred about the hour of _____ o'clock M. on the 15th day of December 2003. The cause and origin of the said loss were:
Final payment for cleaning and emergency services

2. Occupancy: The building described, or containing the property described, was occupied at the time of the loss as follows, and for no other purpose whatever: Commercial

3. Title and Insurance: At the time of the loss the interest of your insured in the property described therein was Owner. No other person or persons had any interest therein or incumbrance thereon, except: Zion First Nation Bank R.E., Rockland Trust

4. Changes: Since the said policy was issued there has been no assignment thereof, or change of interest, use, occupancy, possession, location or exposure of the property described except: None Known

5. Total Insurance: The total amount of insurance upon the property described by this policy was, at the time of the loss, \$936,000, as more particularly specified in the apportionment attached under Schedule "C," besides which there was no policy or other contract of insurance, written or oral, valid or invalid.

6. Full Replacement Cost of the said property at the time of loss was	\$	Undetermined
7. The Full Cost of Repair or Replacement is	\$	19,755.68
8. Applicable Depreciation or Betterment is		
9. Actual Cash Value Loss is (Line 7 minus Line 8)	\$	19,755.68
10. Less deductibles and/or participation by the insured of		
11. Actual Cash Value Claim is (Line 9 minus Line 10)	\$	19,755.68
12. Supplemental Claim, to be filed in accordance with the terms and conditions of the Replacement Cost Coverage within <u>N/A</u> days from the date of loss as shown above, will not exceed	\$	-

(This figure will be that portion of the amounts shown on Lines 8 and 10 which is recoverable.)

The said loss did not originate by any act, design or procurement on the part of your insured, or this affiant; nothing has been done by or with the privity or consent of your insured or this affiant, to violate the conditions of the policy, or render it void; no articles are mentioned herein or in annexed schedules but such as were destroyed or damaged at the time of said loss; no property saved has in any manner been concealed, and no attempt to deceive the said company, as to the extent of said loss, has in any manner been made. Any other information that may be required will be furnished and considered a part of this proof.

The furnishing of this blank or the preparation of proofs by a representative of the above insurance company is not a waiver of any of its rights.

State of MASSACHUSETTS
County of BARNSTABLE

X
X
Surfside Condo Assoc
The Insured

Subscribed and sworn to before me this 26 day of August 2004

X [Signature] Witness

J

Industrial Services & Engineering, Inc.

15 Extension Street, Attleboro MA 02703 (508) 226-8800 FAX (508) 226-8880



**ISE "QUICK FAX REPORT"
PLEASE HAND DELIVER ASAP**

To: Mr. Wayne Levasseur
Lucier Claim Service
P.O. Box 631
East Bridgewater, MA

From: Industrial Services & Engineering

Subject: Exhaust Fan Fire at:
The Surfside Condominium Property
585 Main Street
West Yarmouth, MA
ISE TASK No. 04F015
Policy No. CMP2001017
Claim No. 3LLNO65 (File No. 12150301W)
Inspected By: Tom Zarek CFEI

ATTN:
Donna Moore

Dear Mr. Levasseur

Thank You for allowing Industrial Services & Engineering (ISE) the opportunity to provide technical services to Lucier Claim Service. This is a quick summary of our findings at the above referenced inspection location.

ISE's inspections are conducted by tradesmen who are following an Inspection Protocol under the direction of ISE's Director of Engineering, John P. Certuse, P.E.

A full report will be mailed pending photo processing and any additional information needed.

Findings: 2 August 2004

Our inspection found the unit to be a Broan-Nutone Exhaust Fan. The model number of the unit appears to be 657, serial number N/A. The unit was built in 1997.

The most significant findings of our inspection are the following:

1) ISE was asked to examine two ceiling exhaust fans recovered from this loss location. Reportedly the fan installed within the ladies bathroom had caught on fire and caused damage to the loss location.

The original site cause and origin examination was performed by Jeff Lowe (CFI, CFEI) from EFI. During that examination Mr. Lowe had determined that the origin of the fire was in the second floor

ladies room of this building. Reportedly also, the second floor along with bathrooms was installed in 1997 when Cape Cod Candles began to occupy the location.

Reportedly also, when Mr. Lowe arrived at the loss location, the ceiling fans had already been pulled down, and as such the evidence tags were labeled with the probable location. The fans were acquired from the loss location and transported to ISE's facilities by Wane Lavasseur.

ISE did not examine the loss location, to confirm the origin of the fire or the location of the ceiling fans. However, the fan labeled "probable men's room" contained ceiling members and an absence of fire damage to those members, and thus was likely correctly labeled.

2) Examination of the two fans found that these were of a different design, with potentially different manufacturers. The fan identified as being installed in the men's room was found to have been sold under the Nutone trade name with model number 8664RP. The item did have fire damage, but as previously noted, contained structural or mounting members that possessed no evidence of fire damage.

The second unit, reported to have been installed within the ladies bathroom, was found to be what appears to be a Broan-Nutone model 657 combination exhaust fan and light.

Heat and fire patterns noted on the inside and exterior of the unit indicates that this was exposed to extensive fire damage. Heat damage was noted on both the inside and outside of the appliance, with patterns indicating a migration of a fire from within the unit, through the exhaust fan and out of the exhaust duct. Examination of the lighting reflector, found little evidence of exposure on the face of the reflector, but with evidence of soot and heating on the top side of the reflector in an area closest to the dual receptacles.

3) In this area, two receptacles slots were noted. However, one receptacle was observed to be missing. The second was noted to be in place, and appears to be a male receptacle. This appears to be the connection between the exhaust fan and supply power.

The retaining screw was removed from the fan motor mounting, and an examination of the wire tray was undertaken. Examination within this area, found supply wiring with evidence of electrical arcing as evidenced by balling of wire ends, and one wire observed to have electrically arced to the appliance chassis. Insulation was noted to be missing from all wires within this area, indicating fire exposure. The evidence of electrical arcing noted indicates that the wires were energized at the time of the fire, and were electrically arced to the chassis once the insulation was consumed and the wires were exposed.

The remnants of the female power receptacle for the light was found within this area, with the "hot" connection noted to be missing. Specifically, the hot connection was observed to be separated from the receptacle housing suggesting that this area suffered the greatest amount of heat damage. In comparison, the electrical receptacle for the exhaust fan motor possess significantly less damage than the light receptacle.

4) Further examination within this area, found the supply connection to be attached to the supply wiring and to be located within the wire trace area. Evidence of electrical arcing on the connection end was not noted.

Examination of the motor, found this to have been heavily damaged due to exposure to fire. The plastic blower wheel was entirely consumed, along with both aluminum motor bearing caps. Motor

wiring was observed to be heavily burned with all insulation missing. Fire and heat patterns noted indicate that the fire appeared to be traveling through this area, potentially due to being ingested by the exhaust fan prior to melting of the plastic exhaust fan, and the damage to the motor.

Our initial conclusion of this inspection is the following:

The origin of the fire within this appliance appears to be within the supply wiring to the light. Specifically, the damage to the female receptacle suggests that the supply connection (hot side) overheated causing localized heating as is consistent with a high resistance or poor connection between the light and the supply wiring. Where insufficient surface area occurs between two connections, the flow of electrical current between the supply power and the object being powered causes heating at the connection.

The appliance appears to have been installed in 1997, and potentially over that time period, lint has accumulated within the housing. This lint also accumulates on the blower wheel and can cause an unbalanced condition, resulting in vibration and causing connections to separate.

We did note, that the receptacle provided to the fan was manufactured in such a way, with serrated edges that appears to have been an attempt to prevent that connection from loosening. We did not note this on the light connections.

The appliance was manufactured by Broan-Nutone. The source of the fire within this device appears to be due to a connection failure between the light and supply wiring that came loose over the period of use, and caused a high resistance connection, localized heating and the ensuing fire.

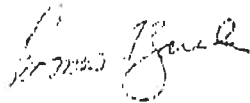
Examination of the second exhaust fan although it did possess fire indications, it appears to have been within a fire and not the source of the fire. We did note that the fan is of a different design, even though it was installed during the 1997 construction activities. This suggests, that it may have been recently replaced.

Should you wish to contact the manufacturer, this appliance was manufactured by Broan-Nutone who is located at:

Broan-NuTone, LLC
PO Box 140
Hartford, WI 53027
(800) 558-1711

Please note that a full written report will be sent upon photo processing and required additional information gathering.

Sincerely



Thomas F. Zarek CFEI
Inspector ISE

K

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. NUMBER: 05-11401-MLW

SENECA INSURANCE COMPANY
As Subrogee of Surfside Condominium
Association,

Plaintiff,

v.

BROAN-NUTONE LLC,

Defendant.

INTERROGATORIES OF BROAN-NUTONE LLC TO
PLAINTIFF SENECA INSURANCE COMPANY

1. Set forth your name, business address, residential address, and position you hold with Seneca Insurance Company.
2. Identify by name and address the owner of Surfside Condominium Association, 585 Main Street, West Yarmouth, MA ("Surfside").
3. Identify each person whom Seneca Insurance Company ("Seneca") expects to call as an expert witness at trial. For each, state:
 - A. the subject matter on which the expert is expected to testify;
 - B. the substance of the facts and opinions to which the expert is expected to testify; and
 - C. a summary of the grounds for each opinion.
4. Please describe fully:
 - A. How Seneca claims the fire described in the Plaintiff's Complaint began;

B. Every fact, act and document which supports Seneca's theory of the cause of the fire; and

C. Any alternative cause investigated or considered by Seneca.

5. With regard to the ceiling/exhaust fan alleged to have been involved in the fire, please state:

A. The name and address of the seller or retailer from whom the fan was purchased;

B. When it was purchased and by whom;

C. A description of all documents or other written material supplied with the fan when purchased;

D. The name and address of each and every individual who installed the fan;

E. The name of the company or business for whom the installers worked;

F. Whether you know if the fan had been changed, repaired, or otherwise altered at any time from the date of purchase until the fire, and,

(i) If your answer is "yes" to interrogatory 5F, please give a complete description of any and all changes, alterations or repairs; or

(ii) If your answer to interrogatory 5F is "no" please describe fully all facts upon which you base that answer.

6. Please describe fully all facts, acts, documents and reasons upon which Seneca relied in making the allegations in the Plaintiff's Complaint that:

A. The fire started in or near the ceiling/exhaust fan; and

B. the ceiling/exhaust fan was the direct and proximate cause of the fire.

7. Please give the following dates:

A. When the owners of Surfside and the property on which it is located learned about the fire;

B. When Seneca learned about the fire;

C. When Seneca learned the cause of the fire was a ceiling/exhaust fan.

D. The date that anyone at Seneca gave notice of the fire to Broan-NuTone, along with a description of how that notice was given and by whom;

8. With respect to any material or debris removed from Surfside and its premises, please state:

A. The name and address of the company and/or people responsible for removal;

B. A full description of what was removed and when;

C. All instructions given by Surfside, the property owners or Seneca as to the preservation of the material removed;

D. The name and address of the person or company in custody or possession of any fire debris as of the date of answering these interrogatories and a description of all debris that is being held and preserved.

9. Identify by name and address each and every person who inspected or was present at the fire scene within 14 days of July 15, 2003.

10. With regard to the allegations in the Plaintiff's Complaint, please state:

A. A complete description of how Seneca claims that Broan-NuTone was negligent;

B. Precisely how the negligence you allege was the proximate cause of the fire;

C. All facts, acts and documents upon which Seneca relies in the allegations in the Plaintiff's Complaint that Broan-NuTone negligently designed the ceiling/exhaust fan that was involved in the fire.

D. Any feasible alternative design available to Broan-NuTone at the time of the manufacture of the ceiling/exhaust fan that would have avoided the fire in July 2003.

E. All facts, acts and documents upon which Seneca relies in the allegation in the Plaintiff's Complaint that Broan-NuTone failed to properly manufacture the ceiling/exhaust fan;

F. Provide a list of the component parts that you claim were negligently manufactured and describe in complete detail the reasons for your conclusion that each component part you list was improperly manufactured;

G. All facts, acts and documents upon which Seneca relies in the allegation in the Plaintiff's Complaint that Broan-NuTone was negligent by placing into the stream of commerce a product that Broan-NuTone knew, or with reasonable care, should have known, was unreasonably dangerous; set forth specifically why Seneca contends the product was unreasonably dangerous; and state specifically which facts were available to Broan-NuTone when the product was sold that the product was unreasonably dangerous and unsafe;

H. All facts, acts and documents upon which Seneca relies in the allegation in its complaint that Broan-NuTone was negligent by failing to warn consumers that the ceiling/exhaust fan was unreasonably dangerous, including in your answer

- (i) the warning that you claim would have been sufficient; and
- (ii) how you claim the lack of the warning was related to the fire.

11. With respect to the allegations raised the Plaintiff's Complaint, please set forth in full and complete detail all facts, acts and documents upon which Seneca relies in making these allegations:

A. Broan-NuTone breached its warranties because the product was unsafe, not of merchantable quality and unfit for its intended uses and purposes; and

B. Due notice was given to Broan-NuTone of its breaches of warranty.

12. Please itemize in full and complete detail all damages allegedly sustained by Seneca and its insureds as a result of the fire.

13. Please itemize all monies received from any source as a result of the fire by

- A. Surfside;
- B. Seneca;
- C. Colonial Candle Company; or
- D. Dick Regent.

14. Identify by name and address all witnesses Seneca may call at trial.

15. Identify all documents, diagrams, sketches, chalks, videotapes, real evidence or other evidence that Seneca may introduce at trial.
16. Identify by name and address the persons or entities responsible for maintenance at Surfside or its premises from 1998 to the present.
17. Identify by name, date and author each and every report possessed by Seneca relating to the fire. In lieu of a written response, you may attach a copy of each report to your answers.

Respectfully Submitted,
BROAN-NUTONE LLC,
By its attorneys,



Christopher A. Duggan
BBO No. 544150
Tamara Lee Ricciardone
BBO No. 562203
SMITH & DUGGAN LLP
Lincoln North
55 Old Bedford Road
Lincoln, MA 01773
(617) 228-4400

Dated: December 16, 2005

CERTIFICATE OF SERVICE

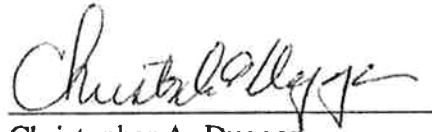
I hereby certify that on this day I served by first class mail, postage prepaid, the documents listed below upon all parties as set forth below on this, the 16th day of December, 2005.

Document Served:

INTERROGATORIES OF BROAN-NUTONE LLC TO PLAINTIFF SENECA
INSURANCE COMPANY

Served:

Michael S. Field, Esq.
Field & Schultz
183 State Street
Boston, MA 02109

A handwritten signature in cursive script, appearing to read "Christopher A. Duggan", written over a horizontal line.

Christopher A. Duggan
BBO No. 544150

L

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. NUMBER: 05-11401-MLW

SENECA INSURANCE COMPANY
As Subrogee of Surfside Condominium
Association,

Plaintiff,

v.

BROAN-NUTONE LLC,

Defendant.

NOTICE OF DEPOSITION: SENECA INSURANCE COMPANY, BY AND
THROUGH GREG POLSKY, SUBROGATION COLLECTIONS MANAGER

TO: Michael S. Field, Esq.
Field & Schultz
183 State Street
Boston, MA 02109

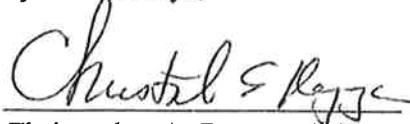
PLEASE TAKE NOTICE THAT, pursuant to Fed. R. Civ. P. 30(b)(6) and 45, defendant Broan-NuTone LLC, through its attorney, will take the deposition upon oral examination of Seneca Insurance Company, by and through Greg Polsky, Subrogation Collections Manager at **10:00 a.m. on Tuesday, February 21, 2006**, at the law offices of Smith & Duggan LLP, Lincoln North, 55 Old Bedford Road, Lincoln, MA 01773. The deposition shall be taken before an officer authorized to administer oaths, and shall continue from day to day until completed.

The witness is further required to bring the items set forth on the attached Schedule A.

If more than one person must be designated and produced by Colonial Candle to comply with this request, each shall be deposed in succession.

You are invited to attend and cross-examine.

Broan-NuTone LLC,
by its attorneys,

A handwritten signature in black ink, appearing to read "Christopher A. Duggan", is written over a horizontal line.

Christopher A. Duggan (BBO No. 544150)
Tamara Lee Ricciardone (BBO No. 562203)
SMITH & DUGGAN LLP
Lincoln North
55 Old Bedford Road
Lincoln, MA 01773
(617) 228-4400

SCHEDULE A

1. All documents relating to the fire that occurred on December 15, 2003 at Surfside Condominium Association and/or Colonial Candle at 585 Main Street, West Yarmouth, MA (the "fire").
2. All records or documents relating to any investigation into The Fire conducted by Seneca, its investigators or its insureds.
3. All photographs, videotapes, diagrams, sketches or other depictions of:
 - A. Any product, debris or other material present at the fire scene;
 - B. Any product, debris or other material removed from the fire scene.
4. All records and documents that relate to any potential cause of The Fire.
5. All records relating to the installation and or maintenance of the fan/light units at 585 Main Street, West Yarmouth, MA (the "premises").
6. All documents reflecting any notice of The Fire given to Broan-NuTone LLC.
7. All records relating to, reflecting or constituting any report by any expert as to:
 - A. The cause of the Fire;
 - B. The design of the fan/light units;
 - C. Plaintiff's allegation that the fan/light units caused a fire;
 - D. Any proposed alternative design of the fan/light units.
8. Any report or document of any fire department, fire marshal or other public entity or agency relating to:
 - A. The Fire;
 - B. The fan/light units;
 - C. The potential cause of The Fire.
9. Any drawings, plans or blueprints reflecting:
 - A. The layout of the premises at 585 Main Street, West Yarmouth, MA;
 - B. The construction of the premises at 585 Main Street, West Yarmouth, MA;
 - C. Wiring of the fan/light units;
 - D. Instructions and/or warnings relating to the use of the fan/light units.
10. All documents relating to or reflecting any damages claimed in this matter by Colonial Candle, Surfside Condominium Association, Dick Vigeant or Seneca.

11. All documents submitted to plaintiff by each of its insureds in support of the claims they submitted to plaintiff arising out of the Fire on which this suit is based.
12. All statements taken of plaintiff's insureds as part of the claims handling process that resulted in plaintiff making payments to its insureds arising out of the Fire on which this suit is based.
13. All correspondence to and from the plaintiff (or its attorneys) and its insureds (or their attorneys) relating to the Fire on which this suit is based, the claims of plaintiff's insureds or the decisions made by plaintiff relative to those claims. This request specifically excludes documents that are protected by attorney client privilege and the work product doctrines.
14. Originals or copies of all bills, invoices, estimates or statements, paid or unpaid, by any person or entity on account of the damages and expenses allegedly sustained or incurred as a result of The Fire.
15. All statements taken from anyone who was or claims to be a witness to the Fire or the events surrounding it.
16. Any and all statements, signed or unsigned, written or recorded, which were taken from or given by you and/or any agent, servant or employee of Seneca concerning the events as alleged in Plaintiff's Complaint.
17. Any and all correspondence between plaintiff and defendant, or any agent, servant or employee thereof, evidencing, concerning, or relating to the events as alleged in the Plaintiff's Complaint or any claim for damages that allegedly occurred on or around December 15, 2003.
18. Any and all correspondence between plaintiff and any entity or individual evidencing, concerning, or relating to the events as alleged in Plaintiff's Complaint or any claim for damages which allegedly occurred on or around December 15, 2003.
19. Any and all documents relating to any claim that the injuries and/or damages complained of in the Plaintiff's Complaint were caused by the negligence of any person or entity.
20. Any and all documents relating to any claim that the injuries and/or damages complained of in the Plaintiff's Complaint were caused by any breach of warranty of any person or entity.
21. Any and all written or other documentary evidence which tends to show that the conduct, by act or omission, of some third person or persons, caused or contributed to the incident which forms the subject matter of this Complaint

including, but not limited to, any and all letters, complaints, pleadings, notices or other documents which refer to or reflect claims by the plaintiff against anyone other than the defendant identified in this litigation for compensation or damages as a result of the Fire.

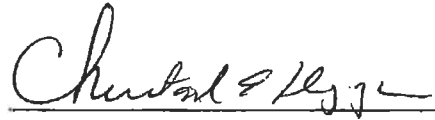
22. The original or copy of the full and complete policy or policies of insurance, including declarations page, application, riders and endorsements, which may provide coverage for liabilities which may be incurred as a result of this lawsuit or have provided coverage to the plaintiff's subrogor.
23. All photographs, videotapes, sketches, diagrams, tables or drawings that relate in any way to the allegations of the Plaintiff's Complaint.
24. Any and all police, fire, or other governmental agency reports pertaining to the Fire.
25. Any and all reports submitted by experts whom the plaintiff intends to call at the trial of this action.
26. Copies of the resume and curriculum vitae of each person whom the plaintiff expects to call as an expert witness at the trial of this action.
27. Any and all documentary evidence that tends to exonerate or exculpate the defendant.
28. Any and all photographs, documentary or tangible evidence that the plaintiff intends to offer into evidence at the trial of this action.
29. All files, logs, memoranda, notes, work orders, correspondence or any other documents either maintained or received by any employee, manager or agent of the Surfside Condominium Association with respect to any electrical work performed by any party or entity at the Surfside Condominium Association from the time it was constructed to December 15, 2003.
30. All files, logs, memoranda, notes, work orders, correspondence or any other documents either maintained or received by any employee, manager or agent of the Surfside Condominium Association that relate to Broan-NuTone LLC, its corporate predecessors, and any products manufactured by Broan-NuTone LLC.
31. All reports, correspondence, claims materials or any other documents of any fire at the Surfside Condominium Association at any time.
32. All reports from independent testing laboratories or any other organizations of tests performed on the Broan-NuTone fan/light units that plaintiff alleges caused the Fire.

CERTIFICATE OF SERVICE

I hereby certify that on this day I served by first class mail, postage prepaid, the above document upon all parties as set forth below on this, the 13th day of January, 2006.

Served:

Michael S. Field, Esq.
Field & Schultz
183 State Street
Boston, MA 02109

A handwritten signature in cursive script, appearing to read "Christopher A. Duggan", written over a horizontal line.

Christopher A. Duggan
BBO No. 544150

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. NUMBER: 05-11401-MLW

SENECA INSURANCE COMPANY
As Subrogee of Surfside Condominium
Association,

Plaintiff,

v.

BROAN-NUTONE LLC,

Defendant.

RE-NOTICE OF DEPOSITION: SENECA INSURANCE COMPANY, BY AND
THROUGH GREG POLSKY, SUBROGATION COLLECTIONS MANAGER

TO: Michael S. Field, Esq.
Field & Schultz
183 State Street
Boston, MA 02109

PLEASE TAKE NOTICE THAT, pursuant to Fed. R. Civ. P. 30(b)(6) and 45, defendant Broan-NuTone LLC, through its attorney, will take the deposition upon oral examination of Seneca Insurance Company, by and through Greg Polsky, Subrogation Collections Manager at **10:00 a.m. on Tuesday, August 29, 2006**, at the law offices of Smith & Duggan LLP, Lincoln North, 55 Old Bedford Road, Lincoln, MA 01773. The deposition shall be taken before an officer authorized to administer oaths, and shall continue from day to day until completed.

The witness is further required to bring the items set forth on the attached Schedule A.

If more than one person must be designated and produced by Seneca Insurance to comply with this request, each shall be deposed in succession.

You are invited to attend and cross-examine.

Broan-NuTone LLC,
by its attorneys,

A handwritten signature in cursive script, reading "Tamara Lee Ricciardone".

Christopher A. Duggan (BBO No. 544150)
Tamara Lee Ricciardone (BBO No. 562203)
SMITH & DUGGAN LLP
Lincoln North
55 Old Bedford Road
Lincoln, MA 01773
(617) 228-4400

SCHEDULE A

1. All documents relating to the fire that occurred on December 15, 2003 at Surfside Condominium Association and/or Colonial Candle at 585 Main Street, West Yarmouth, MA (the "fire").
2. Seneca's claim file relating to the fire and any subrogation efforts made on behalf of Seneca as a result of the fire.
3. Any policies and procedures at Seneca relating to the handling of subrogation claims.
4. Any policies and procedures at Seneca relating to the preservation of evidence at a fire scene.
5. Any policies and procedures at Seneca relating to the investigation of fire losses.
6. All records or documents relating to any investigation into The Fire conducted by Seneca, its investigators or its insureds.
7. All photographs, videotapes, diagrams, sketches or other depictions of:
 - A. Any product, debris or other material present at the fire scene;
 - B. Any product, debris or other material removed from the fire scene.
8. All records and documents that relate to any potential cause of The Fire.
9. All records relating to the installation and or maintenance of the fan/light units at 585 Main Street, West Yarmouth, MA (the "premises").
10. All documents reflecting any notice of The Fire given to Broan-NuTone LLC.
11. All records relating to, reflecting or constituting any report by any expert as to:
 - A. The cause of the Fire;
 - B. The design of the fan/light units;
 - C. Plaintiff's allegation that the fan/light units caused a fire;
 - D. Any proposed alternative design of the fan/light units.
12. Any report or document of any fire department, fire marshal or other public entity or agency relating to:
 - A. The Fire;
 - B. The fan/light units;
 - C. The potential cause of The Fire.

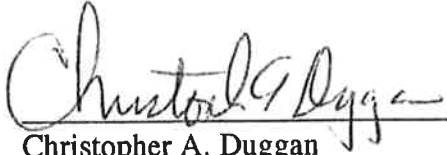
13. Any drawings, plans or blueprints reflecting:
 - A. The layout of the premises at 585 Main Street, West Yarmouth, MA;
 - B. The construction of the premises at 585 Main Street, West Yarmouth, MA;
 - C. Wiring of the fan/light units;
 - D. Instructions and/or warnings relating to the use of the fan/light units.
14. All documents relating to or reflecting any damages claimed in this matter by Colonial Candle, Surfside Condominium Association, Dick Vigeant or Seneca.
15. The original or copy of the full and complete policy or policies of insurance, including declarations page, application, riders and endorsements, which may provide coverage for liabilities which may be incurred as a result of this lawsuit.

CERTIFICATE OF SERVICE

I hereby certify that on this day I served by first class mail, postage prepaid, the above document upon all parties as set forth below on this, the 17 day of August, 2006.

Served:

Michael S. Field, Esq.
Field & Schultz
183 State Street
Boston, MA 02109


Christopher A. Duggan
BBO No. 544150

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. NUMBER: 05-11401-MLW

SENECA INSURANCE COMPANY
As Subrogee of Surfside Condominium
Association,

Plaintiff,

v.

BROAN-NUTONE LLC,

Defendant.

RE-NOTICE OF DEPOSITION: SENECA INSURANCE COMPANY, BY AND
THROUGH GREG POLSKY, SUBROGATION COLLECTIONS MANAGER

TO: Michael S. Field, Esq.
Field & Schultz
183 State Street
Boston, MA 02109

PLEASE TAKE NOTICE THAT, pursuant to Fed. R. Civ. P. 30(b)(6) and 45, defendant Broan-NuTone LLC, through its attorney, will take the deposition upon oral examination of Seneca Insurance Company, by and through Greg Polsky, Subrogation Collections Manager at **10:00 a.m. on Wednesday, December 27, 2006**, at the law offices of Smith & Duggan LLP, 2 Center Plaza, Boston, MA 02108. The deposition shall be taken before an officer authorized to administer oaths, and shall continue from day to day until completed.

The witness is further required to bring the items set forth on the attached Schedule A.

If more than one person must be designated and produced by Seneca Insurance to comply with this request, each shall be deposed in succession.

You are invited to attend and cross-examine.

Broan-NuTone LLC,
by its attorneys,

Christopher A. Duggan

Christopher A. Duggan (BBO No. 544150)
Tamara Lee Ricciardone (BBO No. 562203)
SMITH & DUGGAN LLP
Lincoln North
55 Old Bedford Road
Lincoln, MA 01773
(617) 228-4400

SCHEDULE A

1. All documents relating to the fire that occurred on December 15, 2003 at Surfside Condominium Association and/or Colonial Candle at 585 Main Street, West Yarmouth, MA (the "fire").
2. Seneca's claim file relating to the fire and any subrogation efforts made on behalf of Seneca as a result of the fire.
3. Any policies and procedures at Seneca relating to the handling of subrogation claims.
4. Any policies and procedures at Seneca relating to the preservation of evidence at a fire scene.
5. Any policies and procedures at Seneca relating to the investigation of fire losses.
6. All records or documents relating to any investigation into The Fire conducted by Seneca, its investigators or its insureds.
7. All photographs, videotapes, diagrams, sketches or other depictions of:
 - A. Any product, debris or other material present at the fire scene;
 - B. Any product, debris or other material removed from the fire scene.
8. All records and documents that relate to any potential cause of The Fire.
9. All records relating to the installation and or maintenance of the fan/light units at 585 Main Street, West Yarmouth, MA (the "premises").
10. All documents reflecting any notice of The Fire given to Broan-NuTone LLC.
11. All records relating to, reflecting or constituting any report by any expert as to:
 - A. The cause of the Fire;
 - B. The design of the fan/light units;
 - C. Plaintiff's allegation that the fan/light units caused a fire;
 - D. Any proposed alternative design of the fan/light units.
12. Any report or document of any fire department, fire marshal or other public entity or agency relating to:
 - A. The Fire;
 - B. The fan/light units;
 - C. The potential cause of The Fire.

13. Any drawings, plans or blueprints reflecting:
 - A. The layout of the premises at 585 Main Street, West Yarmouth, MA;
 - B. The construction of the premises at 585 Main Street, West Yarmouth, MA;
 - C. Wiring of the fan/light units;
 - D. Instructions and/or warnings relating to the use of the fan/light units.
14. All documents relating to or reflecting any damages claimed in this matter by Colonial Candle, Surfside Condominium Association, Dick Vigeant or Seneca.
15. The original or copy of the full and complete policy or policies of insurance, including declarations page, application, riders and endorsements, which may provide coverage for liabilities which may be incurred as a result of this lawsuit.

CERTIFICATE OF SERVICE

I hereby certify that on this day I served by first class mail, postage prepaid, the above document upon all parties as set forth below on this, the 18 day of December, 2006.

Served:

Michael S. Field, Esq.
Field & Schultz
183 State Street
Boston, MA 02109

Christopher A. Duggan

Christopher A. Duggan
BBO No. 544150

M

TUESDAY, DECEMBER 16, 2003

Candle shop fire blamed on fan

By MARC PARRY
STAFF WRITER

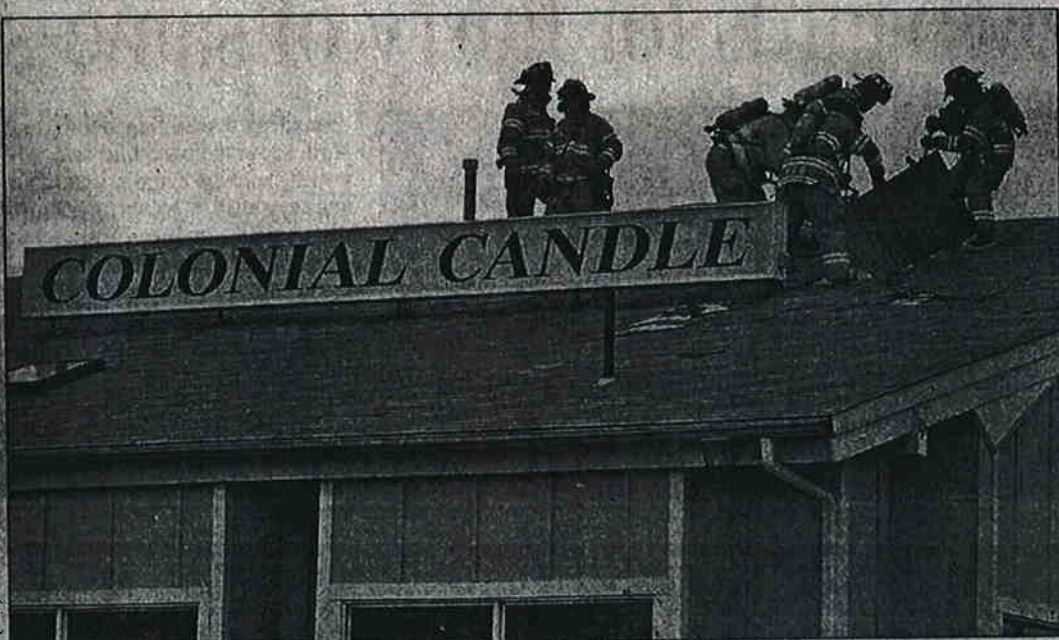
WEST YARMOUTH — Firefighters yesterday chain-sawed through the roof of a Route 28 candle shop to battle a blaze that began with a failed bathroom fan and ended with structural damage but no serious injuries.

The fire started just after 2 p.m. in the second-floor women's bathroom of Colonial Candle of Cape Cod, fire officials said, probably the result of an electrical short or motor failure in the ceiling fan.

Flames shot through a tube attached to the fan and mushroomed up through the rafters and insulation.

All employees and customers at Colonial Candle and Molly's Restaurant & Pub next door were evacuated.

One Colonial Candle worker was treated at the scene for



MATT SUESS

Firefighters vent the roof of the Colonial Candle shop in West Yarmouth yesterday afternoon. The fire caused structural damage but no serious injuries.

smoke inhalation.

"It's hard," said Ann Mark, human resources manager for the candle chain, who rushed to the scene from Hyannis. "It's someone's livelihood. They probably won't be able to come back to work tomorrow."

The store will have to replace its ceilings and probably 60 percent of the wiring, Yarmouth Fire Captain Alan Bowles said.

He said the fire destroyed half of the second-story office area.

Bathroom fans have caused at least three fires in Yarmouth over the last two years, accord-

ing to Deputy Fire Chief C. Randall Sherman.

In Hyannis, an unattended fan at the Cape Crossroads condominium complex in 2001 caused a fire that displaced 29 families.

Sherman said the fans posed no danger if used properly. But "like any small appliance" they can generate heat and short circuit if left on indefinitely, he said.

"Just turn them on, ventilate the bathroom while you have a shower or whatever, and turn them off when you leave," he said.

About 25 firefighters fought yesterday's blaze.

Some firefighters poured water on the fire from inside. Others ventilated the fire by gashing open the roof, tossing insulation and shingles down onto the parking lot below.

The strategy contained the fire to the second floor, which contains offices, storage and a meeting room.

The dozens of candle-filled crates in the store's first floor showroom escaped unscathed. The only disruption downstairs was a puddle of water on the blue rug.

EXHIBIT

5

Vigant